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No. 86-___

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

AMOCO PRODUCTION COMPANY, *et al.*,
Petitioners,

v.

TRIBAL VILLAGE OF AKUTAN, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the lower court erred in holding that the notice, hearings and findings requirements of Section 810(a)(1)-(3) of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3120(a), which apply only to the disposition of federal lands in Alaska that "would significantly restrict subsistence uses," must be complied with for dispositions that are unlikely to, but "may" cause significant restrictions of subsistence uses?

On the facts of this case, there are necessarily implicit in question No. 1 two other questions that are presently before this Court in *Amoco Production Co.* v. *Village of Gambell, cert. granted*, 106 S. Ct. 2274 (1986):

2. Whether ANILCA applies to the leasing or other disposition of lands on the Outer Continental Shelf (OCS)?

3. Whether, assuming ANILCA applies to the leasing of OCS lands, Interior must comply, at the leasing stage of an OCS project, with Section 810(a)(1)-(3) solely because of restrictions of subsistence that cannot occur until the subsequent exploration or development/production stages of the project?

PARTIES TO PROCEEDINGS BELOW

The parties to the proceedings below were:

Appellants (petitioners herein): Amoco Production Company; ARCO Alaska, Inc.; Chevron U.S.A., Inc.; Exxon Corporation; Mobil Exploration & Producing Services, Inc.; Murphy Oil Company; Standard Alaska Production Company (formerly Sohio Alaska Petroleum Company); Shell Western E & P, Inc.; and Union Oil Company of California.[1]

Appellants (not parties to this petition): Donald P. Hodel, Secretary of the Interior; United States Department of the Interior; National Marine Fisheries Service; International Association of Geophysical Contractors; and Elf Acquitaine, Inc.

Appellees: Tribal Village of Akutan; Tribal Village of Togiak; Tribal Village of Nelson Lagoon; Governor Bill Sheffield; State of Alaska; Alaska Independent Fishermen's Marketing Association; Aleutians East Coastal Resource Service Area; Bering Sea Fishermen's Association; Bristol Bay Borough; Bristol Bay Coastal Resources Service Area; Cenaliulritt; United Fishermen of Alaska; Trustees for Alaska; Natural Resources Defense Council, Inc.; Eskimo Walrus Commission; Northern Alaska Environmental Center; City of Quinhagak; Nunam Kitlutsisti; Alaska Center for the Environment; Village of False Pass; Sierra Club; the Wilderness Society; Environmental Policy Institute; National Audubon Society; and Defenders of Wildlife.

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[1] Pursuant to Rule 28.1, petitioners' parent companies, subsidiaries and affiliates are set forth in Appendix H. (A38).

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit that is the subject of this petition was filed on April 28, 1986. It is reported at 792 F.2d 1376 and is reprinted at Appendix A. (A1). The unreported opinion of the United States District Court for the District of Alaska was filed on January 13, 1986, and is reprinted in Appendix B. (A7). That court's preliminary injunction order and partial stay thereof, both also dated January 13, 1986, are reprinted in Appendices C and D, respectively. (A12, 15).

JURISDICTION

This Court has jurisdiction to issue a writ of certiorari to the United States Court of Appeals for the Ninth Circuit pursuant to 28 U.S.C. § 1254(1). The Ninth Circuit's judgment was entered on April 28, 1986, and is reprinted at Appendix E. (A17). On July 17, 1986, Justice Rehnquist granted an extension of time until August 26, 1986 for the filing of this petition.

STATUTE

Section 810(a) of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. § 3120(a), provides:

> "In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the Federal agency having primary jurisdiction over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such Federal agency—
>
> "(1) gives notice to the appropriate state agency and the appropriate local committees

and regional councils established pursuant to section 3115 of this title;

"(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

"(3) determines that (A) such a significant restriction of subsistence uses is necessary, consistent with sound management principles for the utilization of the public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse impacts upon subsistence uses and resources resulting from such actions."

STATEMENT OF THE CASE

Background. This petition seeks review of a Ninth Circuit decision affirming a preliminary injunction against Outer Continental Shelf (OCS) Lease Sale No. 92, involving tracts in the North Aleutian Basin (NA Basin) offshore Alaska. The injunction is predicated solely on the Ninth Circuit's construction of Section 810(a) of ANILCA, 16 U.S.C. § 3120(a). That statute requires a federal agency disposing of lands "situated in Alaska" and owned by the United States to evaluate the effects of its action on subsistence uses—*i.e.*, "the customary and traditional uses by rural Alaska residents of wild, renewable resources. . . ." 16 U.S.C. § 3113. If that evaluation discloses that the proposed disposition "would significantly restrict subsistence," the agency must give notice to the State and to local committees and regional councils, hold hearings in the vicinity of the area involved, and de-

termine that the subsistence restrictions are "necessary," that "the minimal amount" of lands will be used, and that adverse impacts will be "minimize[d]." Section 810(a)(1)-(3), 16 U.S.C. § 3120(a)(1)-(3).

The Ninth Circuit held that the Secretary of Interior violated Section 810(a) by failing to give the notice, hold the hearings and make the determinations contemplated by Section 810(a)(1)-(3), even though his Section 810(a) evaluation concluded that OCS Sale No. 92 was "unlikely" to cause significant subsistence restrictions. Relying solely on language in two earlier Ninth Circuit opinions, and rejecting arguments based on the plain meaning of the statute and on Interior's administrative interpretation of it, the lower court held that Section 810(a)(1)-(3) must be complied with whenever a proposed activity "may" significantly restrict subsistence, even if such restrictions are unlikely. (A6).

Sale No. 92 Planning. OCS Sale No. 92 was originally scheduled for April 1985.[1] Leasing was to proceed on an "area-wide" basis offering all 32.5 million acres in the NA Basin. In March 1984, however, Interior deleted nearly 83% of the acreage from the proposed sale to focus leasing on areas believed to have the highest oil and gas potential and to avoid the most intensive salmon areas and whale or bird migratory pathways.[2] The Department also postponed the sale to January 1986, enabling the State and others to have more opportunity for consultation.

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[1] The Department of Interior had proposed two previous lease sales in the NA Basin for 1974 and 1980, but both were cancelled to permit further environmental studies. *See* Final Decisional Memorandum dated Nov. 27, 1985, Def. Ex. 4, p. 2.

[2] *Id.*

After the Ninth Circuit's November 1984 decision in *Village of Gambell* v. *Clark*, 746 F.2d 572 (*Gambell I*), that Section 810 of ANILCA applies to OCS leasing,[3] Interior published an evaluation under ANILCA of the sale's effects on subsistence as part of the Sale No. 92 Environmental Impact Statement (EIS). (EIS, at p. IV-K-1, reprinted in Appendix G, A21). As required by Section 810(a) of ANILCA, Interior evaluated the effects of Sale No. 92 on subsistence, the availability of other lands, and other alternatives that would reduce or eliminate any conflicts with subsistence.[4]

Interior undertook this analysis for each of the three possible stages of Sale No. 92: leasing, exploration, and development/production.[5] It concluded, based on the information then available, that each of the three stages of the sale "would not significantly reduce the populations of harvestable resources . . ." (A30); "would not alter normal subsistence-resource-distribution patterns . . ." (A31); and "would not limit access to subsistence resources. . ." (A32). Recognizing, however, that a project as extended and complex as Sale No. 92 cannot be perfectly described or fully

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[3] The correctness of this holding is currently before this Court in *Amoco Production Co.* v. *Village of Gambell*, No. 85-1239, and *Hodel* v. *Village of Gambell*, No. 85-1406, *cert. granted*, 106 S. Ct. 2274 (June 2, 1986).

[4] Interior's ANILCA evaluation for Sale No. 92 was prepared under protest, with the Department reserving its position that Section 810 of ANILCA does not apply to OCS leasing. EIS at IV-K-1 (A21).

[5] *See Secretary of the Interior* v. *California*, 464 U.S. 312, 338-41 (1984), discussing the three stages of an OCS project.

evaluated at its leasing stage, Interior admitted uncertainty regarding the project's ultimate threat to subsistence.[6] (A36). Thus, its ultimate conclusion was that significant subsistence restrictions are "unlikely" at all three stages of Sale No. 92. (A36). On this basis, Interior took the position that it was not required to give the notice, hold the hearings, or make the findings contemplated by Section 810(a)(1)-(3).

The Litigation Below. Plaintiffs filed three separate suits in late December 1985 seeking a preliminary injunction against receipt and opening of bids, then scheduled for January 15, 1986. Plaintiffs alleged, *inter alia*, Interior's violation of Section 810(a) of ANILCA, 16 U.S.C. § 3120(a).[7] The petitioners here, nine energy companies interested in submitting bids at the sale, intervened as defendants and, like the federal defendants, opposed the preliminary injunction motions.[8]

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[6] At the leasing stage of an OCS sale in a frontier region, such as the NA Basin, it is impossible to predict the location or amounts of oil that may be discovered. Accordingly, Interior based its ANILCA evaluation "upon reasonable and valid assumptions," but acknowledged "a great deal of uncertainty about the precise location, timing, level and intensity of either development or production." (A36). Interior, therefore, committed that, "if discoveries were made and development and production plans were submitted . . ., these plans also would be subject to review under Section 810 prior to approval." (A37).

[7] Plaintiffs also alleged violations of Section 19 of the OCS Lands Act, 43 U.S.C. § 1345, Section 102(c) of the National Environmental Policy Act, 42 U.S.C. § 4332(c), and Sections 7 and 9 of the Endangered Species Act, 16 U.S.C. §§ 1536, 1538. The district court ultimately found it unnecessary to reach these claims.

[8] The International Association of Geophysical Contractors was also permitted to intervene as a defendant.

On January 13, 1986, the district court issued a preliminary injunction against the sale. Relying on prior Ninth Circuit constructions of Section 810(a), the court held that, if a proposed lease of federal lands gives rise to any "possibility" or "threat" of subsistence restrictions, there must be compliance with the notice, hearing, and finding requirements of Section 810(a)(1)-(3). (A9). Because the Secretary had justified his refusal to comply with these procedures by finding that subsistence restrictions were "unlikely," but not impossible, the court found that plaintiffs had shown the requisite probable success on the merits. (A10).

In light of this conclusion, the court considered itself "without discretion" to deny the requested injunction under Ninth Circuit law as articulated in *Village of Gambell* v. *Hodel*, 774 F.2d 1414 (9th Cir. 1985), *cert. granted, Amoco Production Co.* v. *Village of Gambell*, 106 S. Ct. 2274 (1986) (*Gambell II*). (A10). Accordingly, it enjoined the federal defendants from "receiving, opening, or accepting bids on, or otherwise conducting Lease Sale 92." (A13). Subsequently, the court granted a partial stay pending appeal to allow the federal defendants to receive bids and hold them under seal. (A15).[9]

The federal and industry parties took an expedited appeal to the Ninth Circuit. On April 28, 1986, that court affirmed the preliminary injunction, holding that the district court had correctly applied Ninth Circuit precedent in requiring full compliance with Section

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[9] By agreement of the parties, that stay was subsequently extended to allow the bids to be held under seal pending this Court's decision in *Gambell II*. (Appendix F, A19).

810(a)(1)-(3) whenever leasing of federal lands "may" possibly restrict subsistence. Although recognizing that the defendants' arguments based on the plain language of the statute and the agency's interpretation of it "might be compelling in the abstract" (A6), the court considered itself bound by earlier decisions in *Kunaknana* v. *Clark*, 742 F.2d 1145 (9th Cir. 1984), and *Gambell II*, which had substituted the word "may" for the word "would" in explaining the requirements of Section 810(a).

REASONS FOR GRANTING THE WRIT

This petition presents an important issue for the administration of all federal lands within the ambit of Section 810 of ANILCA. As construed by the Ninth Circuit, the lands subject to ANILCA include not only all onshore federal lands in Alaska, but also the entire OCS lying offshore Alaska.[10] The federal government

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[10] Issues regarding ANILCA's application to the OCS are currently pending before this Court for plenary review in *Amoco Production Co.* v. *Village of Gambell*, *cert. granted*, 106 S.Ct. 2274. If this Court reverses the Ninth Circuit's *Gambell II* decision by holding either that Section 810 does not apply to the OCS or that, even if it so applies, Interior need not comply, at the leasing stage, with Section 810(a)(1)-(3) solely because of impacts that can occur at the subsequent exploration or production stages, the Court should summarily reverse the Ninth Circuit's decision in this case and vacate the preliminary injunction.

On the other hand, if the Court affirms *Gambell II*'s extension of ANILCA to the OCS and its determination that production-stage impacts can give rise to Section 810(a)(1)-(3) compliance obligations at the leasing stage, this case would present an important unresolved issue: In *Gambell II*, those obligations were held to apply where production-stage subsistence restrictions

currently owns more than 225 million acres of lands in Alaska,[11] and exercises jurisdiction over hundreds of millions of acres on the OCS offshore Alaska.

Many Alaska federal land "dispositions" (which under Section 810(a) include the issuance of permits for the use of lands) may pose some "threat" to subsistence. Under the Ninth Circuit's construction of ANILCA, such threats will trigger not only the procedural requirements of further notice and hearings under Section 810(a)(1) & (2), but more importantly the requirement that agencies determine that significant subsistence restrictions are "necessary," that the agency is using the "minimal amount of public lands," and that "reasonable steps will be taken to minimize adverse impacts upon subsistence. . .," Section 810(a)(3). To make such determinations, Interior and other agencies may have to revise or even cancel planned dispositions, merely because of speculative "threats" of subsistence restrictions, even though Congress plainly contemplated that the determinations referred to in Section 810(a)(3) were required only when a proposed disposition "would" significantly restrict subsistence. Thus, the judicial revision of the statute that occurred in this case could seri-

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were regarded as "likely," if production occurs; here such restrictions are regarded as "unlikely" at all stages of the project. Thus, the issue presented here, but not in *Gambell II*, is whether Section 810(a)(1)-(3) applies to a disposition of federal lands when under any reasonable hypothesis it is unlikely to restrict subsistence.

[11] This figure includes lands in the National Forest, Park, and Wildlife Systems, as well as other federal land under the management authority of the Department of Interior. *See* H.R. Rep. No. 97, 96th Cong., 1st Sess., Part I, 391 (1979).

ously impede the process of leasing, permitting, or otherwise disposing of federal lands in Alaska.

THE NINTH CIRCUIT'S DISREGARD OF BOTH THE PLAIN MEANING AND A REASONABLE ADMINISTRATIVE CONSTRUCTION OF SECTION 810(a) JUSTIFIES THE EXERCISE OF THIS COURT'S CERTIORARI JURISDICTION.

One searches the lower court's decision in vain for an explanation of its holding that the notice, hearings, and findings of Section 810(a)(1)-(3) are required when significant restrictions of subsistence are unlikely, but "may" occur. Instead of coming to grips with the language of the statute and with Interior's administrative interpretation, the court below simply relied without analysis on two prior Ninth Circuit opinions: *Kunaknana* v. *Clark*, 742 F.2d 1145, and *Gambell II*.

In neither case did the Ninth Circuit analyze the statute. In *Kunaknana*, the court *rejected* plaintiffs' claim that it was necessary to comply with Section 810(a)(1)-(3) prior to leasing federal lands. In doing so, it offered the following ambiguous and self-contradictory description of the statute:

> "A second provision of Section 810(a) requires the agency to hold public hearings and make specific findings concerning significant restrictions upon subsistence uses caused by federal decisions involving Alaskan public lands. 16 U.S.C. § 3120(a). The second sentence of this provision suggests that these procedures are necessary only if the agency first concludes that the contemplated action *may* significantly restrict subsistence uses. *Id.* To read the sentence otherwise would require that the agency follow these pro-

> cedures any time it contemplated federal action concerning any public lands in Alaska and would completely ignore the phrase 'which *would* significantly restrict subsistence uses.' The inference to be drawn from this language is that Congress intended a two-step process: first, the agency determines whether the contemplated action *may* significantly restrict subsistence use; if it *may*, the agency must comply with the notice and hearing procedures." 742 F.2d at 1151 (emphasis added).

The court's unexplained substitution of the term "may" for "would" appears to have been nothing more than a simple mistake in *obiter dicta*, since the court held that compliance with Section 810(a)(1)-(3) was unnecessary in *Kunaknana*.

This slip of the pen was elevated into the law of the circuit in *Gambell II*, 774 F.2d at 1422. Relying entirely on *Kunaknana*'s substitution of "may" for "would," the court held in *Gambell II* that "the specific procedural requirements of Section 810(a)(1)-(3) . . . are triggered by the threat of a significant restriction of subsistence use. . . ." *Id.* On this basis, the court held that compliance with Section 810(a)(1)-(3) was required at the leasing stage of an OCS sale when production-stage impacts were likely if production occurred, even though there was only a 13% possibility that there would ever be production.

By the time the present case was decided, the Ninth Circuit considered the issue closed. Although conceding that arguments based on the plain language of the statute and on the agency's interpretation "might be compelling," the lower court rejected them "because we consider *Gambell II* plainly controlling. . . ."

(A6). The Ninth Circuit's reliance on *Kunaknana* and *Gambell II* thus only "disguise[s] the fact that no reasons have in reality been given" for the decision.[12]

A. The Ninth Circuit Ignored the Plain Meaning of Section 810(a).

The Ninth Circuit's own statement of the issue in this case highlights its disregard for the language of ANILCA:

> "When do the notice and hearing requirements under ANILCA Section 810(a)[(1)-(3)] apply? Must the Secretary find that a proposed action '*would* significantly restrict subsistence uses?' 16 U.S.C. § 3120(a) (emphasis added). Or is a finding that significant restrictions '*may*' result sufficient, even though such restrictions are deemed unlikely?" (emphasis in original). (A4).

This Court has frequently reiterated that " '[t]he starting point in every case involving construction of a statute is the language itself.' " *Landreth Timber Co.* v. *Landreth*, 105 S.Ct. 2297, 2301-02 (1985) (citations omitted). In *Consumer Product Safety Commission* v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980), it unamimously reaffirmed the "familiar canon of statutory construction" that the language of the statute "must ordinarily be regarded as conclusive." Moreover, "it is appropriate to assume that the ordinary meaning of the language that Congress employed 'accurately expresses the legislative purpose.'" *Mills Music, Inc.* v. *Snyder*, 469 U.S. 153, ___, 105 S.Ct. 638, 645 (1985) (citing *Park'n Fly, Inc.* v. *Dollar Park and Fly, Inc.*, 469 U.S. 189, 105 S.Ct. 658

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[12] R. Cross, Precedent in English Law 196-97 (2d ed. 1968), *reprinted in* R. Aldisert, the Judicial Process 786 (1976).

(1985), and *American Tobacco Co.* v. *Patterson*, 456 U.S. 63, 68 (1982)). *See also, Escondido Mutual Water Co.* v. *La Jolla Band of Mission Indians*, 466 U.S. 765, 772 (1984); *Metropolitan Life Ins. Co.* v. *Massachusetts*, 105 S. Ct. 2380, 2389 (1985).

"Would" is the past tense and subjunctive mood of "will."[13] It is used to express the expected result, if a hypothetical condition occurs.[14] The verb "will" is "used to express simple futurity,"[15] and is also "used to express probability. . . ."[16] Black's Law Dictionary describes "would" as "[a] word sometimes expressing what might be expected. . . . Often interchangeable with the word 'should,' but not with 'could.' "[17] Black's describes the word "will" as "a word of certainty, while the word 'may' is one of speculation and uncertainty."[18]

In Section 810(a), if the contemplated action—in this case, OCS leasing or in other cases its subsequent exploration and production stages—"would significantly restrict subsistence uses," the Department must comply with the additional procedures in Section 810(a)(1)-(3). The plain meaning of the phrase is that the consequence—significant restriction of subsist-

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[13] Webster's Third New International Dictionary (Unabridged) (1976).

[14] *Id.*, def. of "would" No. 5a: *e.g.*, "if he were coming, he *would* be here now" and "had all the possibilities been ruled out, we *would* have had to accept all three."

[15] *Id.*, def. of "will" no. 3a.

[16] *Id.*, def. of "will" no. 5.

[17] Black's Law Dictionary (5th ed. 1979).

[18] *Id.*

ence—either will or at least is likely to occur if the proposal is pursued.

The ordinary meaning of "would" is definitely not "may" in the sense used by the Ninth Circuit. In *INS* v. *Stevic*, 467 U.S. 407 (1984), this Court construed another statute which uses "would" in the same sense as Section 810(a) of ANILCA—Section 243(h) of the Immigration and Nationalization Act, 8 U.S.C. § 1253(h), which then provided:

> "The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien *would* be subject to persecution on account of race, religion, or political opinion and for such period of time as he deems to be necessary for such reason." 467 U.S. at 410. (Emphasis added).

Stevic argued that he could avoid deportation under Section 243(h) even if he could not show that he was more likely than not to be persecuted. 467 U.S. at 412. This Court unanimously rejected that argument, relying upon the plain meaning of the term "would":

> "The section literally provides for withholding of deportation only if the alien's life or freedom 'would' be threatened in the country to which he would be deported; it does not require withholding if the alien 'might' or 'could' be subject to persecution." *Id.* at 422.

Just as "would" does not mean "might" or "could" in the Immigration and Nationalization Act, it does not mean "may" in Section 810(a) of ANILCA.

B. The Ninth Circuit Improperly Refused To Defer to Interior's Reasonable Interpretation of Section 810(a).

This Court has emphasized repeatedly that administrative constructions of statutes are entitled to "considerable deference." *See Young* v. *Community Nutrition Institute*, 106 S. Ct. 2360, 2365 (1986):

> " 'This view of the agency charged with administering the statute is entitled to considerable deference; and to sustain it, we need not find that it is the only permissible construction that [the agency] might have adopted but only that [the agency's] understanding of this very "complex statute" is a sufficiently rational one to preclude a court from substituting its judgment for that of [the agency]. *Train, Inc.* v. *NRDC*, 421 U.S. 60, 75, 87 (1975). . . .' *Chemical Manufacturers Ass'n* v. *Natural Resources Defense Council*, 470 U.S. ___, ___(1985) (slip. op. 8-9)."

Thus, "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). *See also, id.* at 843 n. 11 (citations omitted).

Interior's views regarding the proper construction of Section 810 of ANILCA are entitled to even more than the customary deference which this Court accords agency construction of statutes. Section 814 of ANILCA, 16 U.S.C. § 3124, specifically assigns to the Secretary of the Interior authority to implement the subsistence provisions of ANILCA. Moreover, the

legislative history of the statute,[19] as well as the statute on its face,[20] clearly reveals that the Secretary played a central role in the evolution of ANILCA and was charged with principal responsibility for implementation of the statute. That being the case, an especially high level of deference is owed to his interpretation of ANILCA. *See Udall* v. *Tallman*, 380 U.S. 1, 16 (1965), recognizing that such deference is particularly due when the statutory interpretation at issue

> "involves a contemporaneous construction of a statute by the [persons] charged with the responsibility of setting its machinery in motion; of making the parts work efficiently and smoothly while they are yet untried and new."

Interior conducted an extensive analysis of the effects of Sale No. 92 on subsistence activities, and recognized that any analysis of the effects of the exploration or development/production stages was necessarily speculative. (A36). Accordingly, the Department was unable to give an iron-clad guaranty that subsistence activities would not be significantly restricted, if the production stage were reached, but felt sufficiently confident to conclude that such effects on those activities were "unlikely." (A36).

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[19] *See, e.g.*, H. R. Rep. No. 1045, Part I, 95th Cong., 2d Sess. 72-74 (1978); S. Rep. No. 1300, 95th Cong., 2d Sess. 109-111 (1978).

[20] *See, e.g.*, ANILCA Section 102(12), 16 U.S.C. § 3102(12); Section 201, 16 U.S.C. § 410hh; Section 304(a), 94 Stat. 2393; Section 402(a), 16 U.S.C. § 460mm-1; Section 805(a), 16 U.S.C. § 3115.

On these facts, the Department interpreted Section 810(a) as not requiring present compliance with the notice, hearings, and determinations contemplated by the statute, even though it could not guarantee the absence of significant subsistence restrictions. Clearly, Interior's construction of the statute was a "permissible" one to which the lower court should have deferred. The Ninth Circuit obviously erred in relying upon its own unexamined substitution of the term "may" for the term "would" as justification for its disregard for Interior's construction of the statute.

CONCLUSION

This Court has already granted review in *Gambell II* of two ANILCA questions potentially dispositive of this case. If this Court reverses the Ninth Circuit in *Gambell II* on either of these two questions, this case should be summarily reversed. Alternatively, if this Court does not reverse the Ninth Circuit in *Gambell II* on either of those two questions, it should grant this petition and entertain full briefing and argument regarding that court's application of ANILCA in this case.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Nos. 86-3512/86-3514/86-3517

DC Nos. CV-A85-701-V
CV-J85-037-V
CV-J85-038-V

TRIBAL VILLAGE OF AKUTAN, *et al.*,
Plaintiffs-Appellees,

vs.

DONALD P. HODEL, *et al.*,
Defendants-Appellants.

Appeal from the United States District Court for the District of Alaska
James A. von der Heydt, District Judge, Presiding

MEMORANDUM

Argued and Submitted March 14, 1986

Before: DUNIWAY, GOODWIN, BRUNETTI, Circuit Judges

In this consolidated appeal, appellants Secretary of the Interior, ten oil companies, and others, seek review of a district court order granting a preliminary injunction restraining the Secretary from proceeding with Lease Sale 92 in the North Aleutian Basin. We affirm.

I. BACKGROUND

Lease Sale 92 is proposed as part of the Department of Interior's current five-year offshore oil and gas leasing program, established under section 18 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1344. In preparing for the Sale, the Secretary was required to conduct an evaluation of the effects of the sale on subsistence uses and resources pursuant to section 810(a) of the Alaska National Interest Lands Conservation Act ("ANILCA"), 16 U.S.C. § 1320(a). Section 810(a) can be described as consisting of two tiers, the first requiring an evaluation, and the second, under the appropriate circumstances, requiring notice, hearings, and minimization of adverse impact upon subsistence uses and resources.

The Secretary conducted an evaluation pursuant to the first tier of section 810(a), but, based on his finding that significant subsistence restrictions were "unlikely," declined to undertake the second tier procedures of noticed hearings and mitigation of environmental harm.

Following the Secretary's announcement in December 1985, of his decision to go forward with Lease Sale 92, appellees the State of Alaska, Trustees for Alaska, the Tribal Village of Akutan, and others, filed suit in federal district court. The parties sought a preliminary injunction against the receipt and opening of bids based on violations of ANILCA and other statutes.[1]

---

[1] Appellants alleged violations of section 19 of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1345, section 102(c) of the National Environmental Policy Act, 42 U.S.C. § 4332(c), and sections 7 and 9 of the Endangered Species Act, 16 U.S.C. §§ 1536, 1538.

On January 13, 1986, the district court enjoined the Secretary from proceeding with the bidding process in Lease Sale 92. Invoking two recent Ninth Circuit decisions construing ANILCA, the court concluded that the Secretary had applied an incorrect legal standard in determining his duties under section 810(a) and accordingly had failed to comply with the notice and hearing requirements in section 810(a)(1)-(3). Specifically, the court held that, notwithstanding the Secretary's finding that subsistence restrictions were unlikely, where a proposed action "may significantly restrict subsistence uses," the Secretary is required to proceed with notice and hearing under the second tier of section 810(a). Memorandum and Order at 2-3, *citing People of the Village of Gambell v. Hodel (Gambell II),* 774 F.2d 1414, 1421-22 (9th Cir. 1985), and *Kunaknana v. Clark,* 742 F.2d 1145, 1151 (9th Cir. 1984). The district court concluded that appellants had established a strong likelihood of success on their ANILCA claim, and that an injunction was required as a matter of course under *Gambell II,* 774 F.2d at 1422-26. Having granted a preliminary injunction based on appellants' ANILCA claim, the court declined to address the other alleged statutory violations.

II. STANDARD OF REVIEW

Our review of a ruling on a motion for a preliminary injunction is "very limited." *Apple Computer, Inc. v. Formula International, Inc.,* 725 F.2d 521, 523 (9th Cir. 1984). "The grant or denial of a motion for a preliminary injunction lies within the discretion of the district court," *Sports Form, Inc. v. United Press Int'l, Inc.,* 686 F.2d 750, 752 (9th Cir. 1982), and will be reversed only for an abuse of discretion or if the decision is based on an erroneous legal standard. *Oakland Tribune, Inc. v. Chronicle Publishing Co.,* 762 F.2d 1374, 1376 (9th Cir. 1985).

"To obtain a preliminary injunction, a party must show either 1) a likelihood of success on the merits and the

possibility of irreparable injury, or 2) the existence of serious questions going to the merits and the balance of hardships tipping in its favor." *Apple Computer*, 725 F.2d at 523. Absent unusual circumstances, irreparable damage is presumed and an injunction is required when an agency violates ANILCA section 810(a). *Gambell II*, 774 F.2d at 1422-23.

Because the preliminary injunction rested solely on the district court's interpretation of section 810(a), our review is, as a practical matter, *de novo*.

III. DISCUSSION

The central issue before us can be simply framed: When do the notice and hearing requirements under ANILCA section 810(a) apply? Must the Secretary find that a proposed action "*would* significantly restrict subsistence uses?" 16 U.S.C. § 3120(a) (emphasis added). Or is a finding that significant restrictions "*may*" result sufficient, even though such restrictions are deemed unlikely?

The Secretary contends that a finding that a proposed action "would" significantly restrict subsistence uses is required to trigger section 810(a)(1)-(3) notice and hearing procedures. He offers the following arguments in support of his construction: 1) this court's decisions in *Kunaknana* and *Gambell II* do not require compliance with section 810(a)(1)-(3) absent a likelihood of significant restrictions upon subsistence resources, and 2) the Secretary's construction is required by the plain language of the statute and is entitled to judicial deference. We consider these arguments in turn.

A. Kunaknana and Gambell II.

In *Kunaknana v. Clark*, 742 F.2d 1145 (9th Cir. 1984), we read section 810(a) as requiring notice and public hearings "if the agency first concludes that the contemplated action *may* significantly restrict subsistence uses." *Id.* at 1151 (emphasis added).

> The inference to be drawn from [the phrase "which would significantly restrict subsistence uses"] is that Congress intended a two-step process: first, the agency determines whether the contemplated action may significantly restrict subsistence use; if it may, the agency must comply with the notice and hearing procedures. This construction of the statute is a reasonable one, relying on the plain meaning of the words of the statute.

Id.

Although the *Kunaknana* court was not called upon specifically to decide when section 810(a)(1)-(3) procedures would be required, its analysis has subsequently formed the basis for a holding in this circuit.

In *People of the Village of Gambell v. Hodel (Gambell II)*, 774 F.2d 1414 (9th Cir. 1985), the Secretary's section 810(a) evaluation indicated that development and production of the proposed lease sale "may significantly restrict subsistence uses in certain areas." *Id.* at 1422. The court held that under *Kunaknana* the Secretary's finding required that he proceed with the notice and hearing procedures under section 810(a)(1)-(3). *Id.*

Moreover, the argument that the Secretary makes here was presented in nearly identical form to the *Gambell II* court:

> Interior has interpreted the language of Section 810 to require a likelihood of a significant restriction to be evident before the procedures of Subsections 810(a)(1)-(3) come into play. Thus, it found here that "given the low probability that oil will be found, these possible restrictions [at the production stage] are not likely to occur, even locally, as a result of the sale". . . . It also found that significant restrictions on subsistence at the exploration stage "are not likely* * *". . . .

Supp. ER, Vol. II, Ex. 10, CR 32.

The *Gambell II* court rejected the Secretary's view that section 810(a)(1)-(3) procedures required a *likelihood* of significant subsistence restrictions, and, on findings not meaningfully different than those here, concluded that the Secretary was required to comply with the notice and hearing requirements of the statute. We believe that *Gambell II* governs this case, and that the district court did not err in determining that appellants had shown a strong likelihood of success on the merits of their claim that the Secretary had failed to comply with the notice and hearing requirements of section 810(a)(1)-(3).

B. Plain Language and Deference to Agency Interpretation

The Secretary next urges that his interpretation of section 810(a)(1)-(3) is required by the plain language of the provision, and, as an agency's interpretation of a statute it is charged with administering, is entitled to a high degree of judicial deference and must be upheld unless unreasonable. Both these arguments might be compelling in the abstract, but because we consider *Gambell II* plainly controlling, they do not alter our conclusion that compliance with section 810(a)(1)-(3) procedures is required before the Secretary may proceed with Lease Sale 92. *See Cubanski, etc. v. Heckler*, No. 85-7123, slip op. at 7, (9th Cir. March 6, 1986) (courts are the final authorities on issues of statutory construction).

CONCLUSION

The district court applied the correct legal standard in concluding that the Secretary must comply with the notice and hearing procedures in ANILCA section 810(a)(1)-(3) when he finds that significant restrictions on subsistence uses are "unlikely." Having identified a probable ANILCA violation, the court did not abuse its discretion in granting a preliminary injunction.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

A85-701 CIV

TRIBAL VILLAGE OF AKUTAN, *et al.*,
Plaintiffs,

vs.

DONALD P. HODEL, *et al.*,
Defendants,
AMOCO PRODUCTION COMPANY, *et al.*,
Intervenor-Defendants.

J85-037 CIV

GOVERNOR BILL SHEFFIELD, *et al.*,
Plaintiffs,

vs.

DONALD P. HODEL, *et al.*,
Defendants,
AMOCO PRODUCTION COMPANY, *et al.*,
Intervenor-Defendants.

J85-038 CIV

TRUSTEES FOR ALASKA, *et al.*,

Plaintiffs,

vs.

DONALD P. HODEL, *et al.*,

Defendants,

AMOCO PRODUCTION COMPANY, *et al.*,

Intervenor-Defendants.

Consolidated Under A85-701 CIV

FILED
JAN 13 1986

MEMORANDUM AND ORDER

THIS CAUSE comes before the court on the plaintiffs' motions for preliminary injunction. Oral argument has been waived by all parties.

An injunction must issue in this case because the Secretary applied the incorrect standard in determining whether the lease sale would significantly effect [sic] subsistence uses under ANILCA § 810. Given that the Secretary cannot open lease bids based on a probable violation of ANILCA, the court finds it unnecessary to address the remaining claims at this time.

ANILCA requires the Secretary, prior to holding any lease sale, to determine whether the lease "would significantly restrict subsistence uses." ANILCA § 810, 16 U.S.C. § 3120 (1982). If the Secretary finds significant restriction, then the notices and hearings stated in § 810(a)(1)-(3) are required.

The Secretary found that Lease Sale 92 would cause no significant restriction on subsistence for the reason that the lease sale and connected exploration, development, and production activities were "*unlikely* to significantly restrict subsistence uses" in any area. FEIS IV-K-9 (emphasis added). In so finding, he applied the incorrect legal standard.

The Ninth Circuit has held in both *Kunaknana v. Clark*, 742 F.2d 1145, 1151 (9th Cir. 1984), and in *People of the Village of Gambell v. Hodel*, 774 F.2d 1414, 1421-22 (9th Cir. 1985) (*Gambell II*), that ANILCA requires notice and hearing if the proposed action "may significantly restrict subsistence uses."[1] According to the Ninth Circuit in *Gambell II*, this standard requires a finding of significance if there is a "possibility" of significant restriction, 774 F.2d at 1416, or a "threat" thereof. *Id.* at 1422. The Ninth Circuit's standard thus represents a lower threshold (i.e., requires less certainty of environmental harm) than the likelihood standard adopted by the Secretary.[2]

Plaintiffs also allege that the Secretary violated ANILCA in finding that no restriction on subsistence would occur if substitute subsistence species were available, and in evaluating subsistence effects on a regional basis, rather than on a village-by-village basis. Given that the FEIS does not adequately discuss how potential effects on different species could affect the availability of subsistence resources, it is unclear on what basis the Secretary determined (beyond his oil spill risk analysis) that subsistence effects were unlikely. In any event, a new subsistence

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[1] In adopting this standard, the Ninth Circuit no doubt intended courts to draw on NEPA case law as a guideline for determining significance. *See Foundation for North American Wild Sheep v. United States Dept. of Agriculture*, 681 F.2d 1172 (9th Cir. 1982).

[2] Additionally, the court notes that the appropriateness of this "likelihood" standard was specifically argued to the Ninth Circuit in *Gambell II* and impliedly rejected by that court. *See* Pl. ex. 10 & 11, Tribal Village reply brief.

determination must be made and such a determination could well moot these issues. For similar reasons, the court also finds it unnecessary to address other ANILCA issues at this time.

Defendants have indicated to the court that they wish to attempt to dispose of the issues in this action by way of summary judgment motions. The court invites such motions for the reason they potentially would permit it to address and dispose all issues only once.[3] In the event the parties wish to file additional motions, they should do so by March 12, 1986. For those issues that have already been briefed, the court finds additional rebriefing to be unnecessary. Similarly, if it becomes necessary to address plaintiffs' remaining claims on a preliminary injunction basis, plaintiffs may file renewed motions for preliminary injunction incorporating their current briefing.

Fed. R. Civ. P. 65(c) requires this court to address proper security upon the issuance of an injunction. The court finds the tribal village and environmental plaintiffs are unlikely to be in a position to post meaningful security for damages in this action, given the extent of potential economic harm. The State of Alaska shall post a bond of $10,000 as security for costs in this action. No security is required for damages, it being unlikely that damages will accrue or be awarded.

In conclusion, the court finds that plaintiffs have established a strong likelihood of success on their ANILCA claim. Accordingly, the court is without discretion and an injunction must issue, no unusual circumstances being present. *Gambell II*, 774 F.2d at 1422-1426.

Therefore, IT IS ORDERED:

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[3] Absent such motions, each issue must be addressed twice, once on preliminary injunction and once on the merits. Multiple appeals could result.

(1) THAT plaintiffs' motions for preliminary injunction are granted;

(2) THAT the State of Alaska post $10,000 security for costs with the court no later than January 24, 1986; and

(3) THAT such additional motions as the parties may find appropriate shall be filed no later than March 12, 1986.

DATED at Anchorage, Alaska, this 13th day of January, 1986.

/s/ JAMES A. VON DER HEYDT
United States District Judge

cc: Alaska Legal Services
U.S. Attorney
Carl Bauman
Eric Smith
Laura L. Davis
William A. Rozell
Stephen Ellis
Michael Frank
Robert Adler

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

A85-701 CIV

TRIBAL VILLAGE OF AKUTAN, *et al.*,
Plaintiffs,

vs.

DONALD P. HODEL, *et al.*,
Defendants,

AMOCO PRODUCTION COMPANY, *et al.*,
Intervenor-Defendants.

J85-037 CIV

GOVERNOR BILL SHEFFIELD, *et al.*,
Plaintiffs,

vs.

DONALD P. HODEL, *et al.*,
Defendants,

AMOCO PRODUCTION COMPANY, *et al.*,
Intervenor-Defendants.

J85-038 CIV

TRUSTEES FOR ALASKA, *et al.*,
Plaintiffs,

vs.

DONALD P. HODEL, *et al.*,
Defendants,

AMOCO PRODUCTION COMPANY, *et al.*,
Intervenor-Defendants.

Consolidated Under A85-701 CIV

FILED
JAN 13 1986

PRELIMINARY INJUNCTION

For the reasons set forth in the court's memorandum and order of this date, IT IS ORDERED:

(1) THAT Secretary of the Interior Donald P. Hodel, Director of the Minerals Management Service William D. Bettenberg, and their agents, servants, employees and attorneys are enjoined from receiving, opening, or accepting bids on, or otherwise conducting Lease Sale 92;

(2) THAT this injunction shall be effective immediately and shall remain in force until further order of the court;

(3) THAT no later than January 24, 1986, the State of Alaska shall post $10,000 security for costs with the court.

DATED at Anchorage, Alaska, this 13th day of January, 1986.

/s/ JAMES A. VON DER HEYDT
JAMES A. VON DER HEYDT

United States District Judge

cc: Alaska Legal Services
U.S. Attorney
Carl Bauman
Eric Smith
Laura L. Davis
William A. Rozell
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APPENDIX D

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FILED
JAN 13 1986

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

Case No. A85-701 Civil (Consolidated)

TRIBAL VILLAGE OF AKUTAN, *et al.*,
Plaintiffs,

vs.

DONALD P. HODEL, *et al.*,
Defendants,

AMOCO PRODUCTION COMPANY, *et al.*,
Intervenor Defendants.

ORDER GRANTING PARTIAL STAY OF PRELIMINARY INJUNCTION

This court's order of January 13 granting the motions for preliminary injunction of Sale 92 is partially stayed

pending resolution of the appeal by the oil company intervenor-defendants Amoco Production Company, *et al.*, to the Ninth Circuit, as follows:

1. The Secretary may receive sealed bids for OCS Lease Sale 92 tracts as previously scheduled for January 15, 1986, but the Secretary is enjoined from opening any OCS Lease Sale No. 92 bids until further order of this court or of a court exercising appellate jurisdiction.

2. The effectiveness of 30 C.F.R. § 256.47(a) and the notice published at 50 Fed. Reg. 51,372 (December 16, 1985) to the extent they require bid opening by 11:59 p.m. January 15 are tolled until further order of this court or of a court exercising appellate jurisdiction. *See California v. Clark* (No. 83-6436, 9th Cir., Order of November 30, 1983). The Secretary of the Interior shall retain all Sale No. 92 bids unopened and under seal until that time.

3. The provision of paragraph 2 of the notice published at 50 Fed. Reg. 51,372, permitting bids to be withdrawn up to 30 minutes prior to scheduled bid opening is tolled to the same extent as the provision of the notice referred to in paragraph 2 above.

/s/ JAMES A. VON DER HEYDT
JAMES A. VON DER HEYDT
United States District Court Judge

cc: Carol Daniel (Alaska LEGAL SERVICES)
Carl Bauman (HUGHES, THORSNESS)
Robert Adler
U.S. Attorney
William Rozell
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APPENDIX E

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Nos. 86-3512
86-3514
86-3517
CV A85-701-V
CV J85-037-V
CV J85-038-V

TRIBAL VILLAGE OF AKUTAN, *et al.*,
Plaintiffs-Appellees,

vs.

DONALD P. HODEL, *et al.*,
Defendants-Appellants.

FILED
JUL 02 1986

APPEAL from the United States District Court for the _____ District of _____

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the ANCHORAGE District of ALASKA and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the ___judgment of the said District Court in this Cause be, and hereby is AFFIRMED.

cy: Carol Daniel (AK Legal Services)
Carl Bauman (HUGHES, THORSNESS)

Eric Smith (TRUSTEES FOR AK)
Laura Davis (State of AK)
Bruce Landon (DOJ)
William Rozell (FAULKNER, GANFIELD)
Stephen Ellis (DELANY, WILES)
Judge von der Heydt

Filed and Entered: April 28, 1986

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

Case No. A85-701 Civil
(Consolidated)

THE TRIBAL VILLAGE OF AKUTAN, a federally recognized Tribe; the TRIBAL VILLAGE OF TOGIAK, a federally recognized Tribe; and the TRIBAL VILLAGE OF NELSON LAGOON, a federally recognized Tribe,

Plaintiffs,

v.

DONALD P. HODEL, Secretary of the Interior, and THE UNITED STATES DEPARTMENT OF THE INTERIOR,

Defendants.

AMOCO PRODUCTION CO., *et al.*

Intervenor-Defendants.

ORDER

Good cause showing, effective upon issuance of the mandate of the Ninth Circuit in this action, the following is ORDERED:

1. This Court's order of January 13, 1986 staying in part its preliminary injunction order of the same date shall remain in effect pending further order of this Court or of a court exercising appellate jurisdiction in this case. This Court will not dissolve the January 13, 1986 partial stay until the Supreme Court denies *in toto* defendants' petitions for certiorari or issues a decision on the merits of all questions as to which

certiorari has been granted in *Amoco Production Co. v. Village of Gambell,* No. 85-1239, *Hodel v. Village of Gambell,* No. 85-1406, and *Village of Gambell v. Hodel,* No. 85-1608.

2. Paragraph 1 of this Court's March 3, 1986 order is modified to stay discovery in this case until: The Supreme Court denies *in toto* defendants' petitions for certiorari or issues a decision on the merits of all questions as to which certiorari has been granted in *Amoco Production Co. v. Village of Gambell,* No. 85-1239, *Hodel v. Village of Gambell,* No. 85-1406, and *Village of Gambell v. Hodel,* No. 85-1608.

3. Paragraph 2 of this Court's March 3, 1986 order is modified to provide that any time remaining for response by the federal defendants to plaintiffs' discovery will commence to run again at the time the stay of discovery is vacated pursuant to paragraph 2 above.

/s/ JAMES VON DER HEYDT
JAMES VON DER HEYDT
U.S. District Court Judge

DATED: MAY 21, 1986

cc: Carol Daniel
Carl Bauman
Robert Adler
Laura Davis
U.S. Attorney
William Rozell
Stephen Ellis

APPENDIX G

K. Section 810 Evaluation

The Department of the Interior maintains that neither Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) nor the subsistence evaluation procedures in Section 810 of the ANILCA apply to outer continental shelf (OCS) leasing activities. In light of the Ninth Circuit Court's decision, November 2, 1984, *Gambell and Stebbins v. Clark,* the Minerals Management Service (MMS) has prepared the following evaluation under Section 810 of ANILCA. This evaluates the effects of the proposed North Aleutian Basin Lease Sale 92 on subsistence uses and needs, the availability of other lands, and other alternatives that would reduce or eliminate the area of the lease sale that conflicts with subsistence needs.

Recent case law distinguishes the lease sale from other stages of OCS development, i.e., exploration, and development and production. Therefore, each of the three stages is examined separately. This division also will better identify the possible effects of each stage on subsistence uses. Future stages are evaluated to the extent possible at this time, consistent with other analyses in the EIS. The three stages examined are:

- Lease Sale
- Exploration
- Development and Production

Section 810 of the ANILCA (Public Law 96-487) provides that:

> (a) In determining whether to withdraw, reserve, lease, or otherwise permit the use, occupancy, or disposition of public lands under any provision of law authorizing such actions, the head of the federal agency having primary jurisdiction

over such lands or his designee shall evaluate the effect of such use, occupancy, or disposition on subsistence uses and needs, the availability of other lands for the purposes sought to be achieved, and other alternatives which would reduce or eliminate the use, occupancy, or disposition of public lands needed for subsistence purposes. No such withdrawal, reservation, lease, permit, or other use, occupancy, or disposition of such lands which would significantly restrict subsistence uses shall be effected until the head of such federal agency:

(1) gives notice to the appropriate state agency and the appropriate local committees and regional councils established pursuant to Section 805;

(2) gives notice of, and holds, a hearing in the vicinity of the area involved; and

(3) determines that (A) such a significant restriction of subsistence uses is necessary and consistent with sound management principles for the utilization of public lands, (B) the proposed activity will involve the minimal amount of public lands necessary to accomplish the purposes of such use, occupancy, or other disposition, and (C) reasonable steps will be taken to minimize adverse effects upon subsistence uses and resources resulting from such actions.

(b) If the Secretary is required to prepare an environmental impact statement pursuant to Section 102(2)(C) of the National Environmental Policy Act, he shall provide the notice and hearing and include the findings required by subsection (a) as part of such environmental impact statement.

> (c) Nothing herein shall be construed to prohibit or impair the ability of the State or any Native Corporation to make land selections and receive land conveyances pursuant to the Statehood Act or the Alaska Native Claims Settlement Act.
>
> (d) After compliance with the procedural requirements of this section and other applicable law, the head of the appropriate federal agency may manage or dispose of public lands under his primary jurisdiction for any of those uses or purposes authorized by this Act or other law.

To determine if a significant restriction of subsistence uses and needs is likely to result from the proposal, the following three factors have been considered:

- The likelihood of reducing the population of harvestable resources;
- The likelihood of reducing the availability of resources by alteration of their normal distribution patterns; and
- The likelihood of limitation of access to subsistence resources.

Restrictions, if any, on subsistence use would be significant if there were:

- A large reduction in the abundance of a harvestable resource;
- Major redistributions of those resources;
- Substantial interference with harvester access to active subsistence sites; or
- A major increase in nonsubsistence harvests by nonrural, nonresident OCS workers.

Restrictions, if any, on subsistence use would not be significant if there were:

- No, or a slight, reduction in the abundance of harvestable resources;
- No effect (or slight inconvenience) on the ability of harvesters to reach and use active subsistence-harvesting sites; and
- No substantial increase in competition for harvestable resources from nonsubsistence harvests by nonrural, nonresident OCS workers.

1. *The Proposal—Factors Affecting Subsistence Uses and Needs:* Uses of subsistence resources in the potentially affected area are discussed in Sections III.C.4. and IV.B.1.b.(4) of this EIS. Those discussions are incorporated by reference in this Section 810 analysis. Subsistence uses noted include salmon, moose, caribou, waterfowl, crab, other salt-water fish, fresh-water fish, seal, walrus, reindeer, and beaver. Subsistence activities, although concentrated on land, along the coasts, and near shore, occur less throughout the entire lease sale area than in nearby selected communities.

In addition to the discussion of subsistence resources and uses, this EIS includes a forecast of future subsistence trends. According to this forecast, the communities selected for discussion are expected to exhibit a continued dependence on subsistence; per capita levels of dependence are expected to remain stable during the projected life of the oil field.

The Section 810 evaluation of the development and production stage of this proposal is based on the development and production scenario designed around oil and LNG terminals located at Balboa Bay, connected by pipelines to the offshore oil and gas fields. A variation of this scenario, which considers transporting oil directly to market from an offshore-loading point within the lease sale area, also is used in the EIS. The pipeline scenario is used in this 810 analysis because potential effects are the same as, or

greater than, those derived from the offshore-loading scenario. The proposed pipeline scenario provides the hypotheses and assumptions necessary to make such a determination. Since no development and production plans exist at present, the proposed scenario assumes that oil and gas will be found in economically recoverable amounts; it further assumes that 1 or more oil spills of 1,000 barrels or greater will occur during the productive life of the field. Resource estimates indicate, however, that there is only a 20-percent chance of recoverable petroleum being present in the lease sale area. If oil is found, there is a 61-percent chance that 1 or more oil spills of 1,000 barrels or greater will occur somewhere within the basin (Sec. IV.A.3.b.).

Seismic surveying constitutes another possible source of effects on subsistence uses. Airgun devices are generally preferred for seismic work because they produce higher quality data and less damage to marine life than explosive devices. The small potential radius within which airgun effects may be experienced and the limited amount of such testing that may occur in the North Aleutian Basin suggest that effects on fish and marine invertebrates would be negligible, especially if explosive-energy devices are not used (see Sec. IV.B.1.a.(1) regarding seismic effects on fish and marine invertebrates).

To determine the potential significant restrictions on subsistence uses and needs, the following criteria were considered: (1) potential to reduce the population of harvestable resources, (2) potential to reduce availability of resources by alteration of their normal distribution patterns, and (3) limitation of access to subsistence resources. Within this framework, the discussion focuses on Unalaska, Cold Bay, the Bristol Bay region (including the northern shore of Bristol Bay), and the lower Alaska Peninsula subregion. Unalaska and Cold Bay are assumed to host petroleum industry operations in support of the proposed lease sale. Those nonhost communities (including Nelson

Lagoon and Sand Point) that could be affected by an LNG and oil terminal at Balboa Bay also are considered. In these communities, potential changes in the patterns of subsistence-resource use during development and production, as a result of the lease sale, are assessed in relation to population increases and risks to resources posed by potential oil-spill incidents.

In each case, potential effects are assessed in relation to current trends brought about in each community in the absence of the lease sale.

a. *Potential to Reduce the Population of Harvestable Resources:* For the purpose of analyzing the significance of the effects of the proposal's three stages on subsistence uses for this Section 810 determination, the area of analysis has been divided into two basic categories: the communities that potentially could host support bases, namely Unalaska and Cold Bay, and the Bristol Bay region, with special attention given the lower Alaska Peninsula subregion, which is proximate to the lease sale area (see Sec's. III.C.4. and IV.B.1.b.(4)).

(1) *Unalaska and Cold Bay:* Exploration activities are expected to be based primarily out of support facilities located at Unalaska and Cold Bay. The limited scope and duration of such activities should produce no appreciable effects on subsistence in either community due to a reduction in the populations of harvestable resources. During development and production stages, the lease sale would contribute 4 to 7 percent of the resident or enclave population in Unalaska at any given time over the expected life of the project, as discussed in Section IV.A.1.d. The added harvest competition for locally available subsistence resoures from this source would be insignificant in Unalaska, particularly compared to the population effects of fisheries-oriented industrial development in the community (as described in Sec. III.C.4.). Development and production in the lease sale area is expected to increase the resident

population of Cold Bay by 25 to 30 percent, but effects on subsistence-use patterns would be minimal due to the limited extent of subsistence practices carried out there and to the relative abundance of fish and wildlife resources within reach of Cold Bay residents.

The potential loss of subsistence resources or habitat from offshore oil-spill events is more likely in Cold Bay than in Unalaska, due to the proximity of the offshore field (see Sec. IV.B.1.b.(4)). The probability of spilled oil reaching the coast near Cold Bay within 30 days is 1 percent. The combined agents of potential population increases and oil-spill events produce the highest potential for effects in Cold Bay, but the net result on Cold Bay subsistence-use patterns would be minimal due to the limited subsistence demand for resources (see Sec. III.C.4.) and the relative abundance of resources in the area. According to the biological analysis, most effects on the size of the populations of harvestable resources due to the proposal would come from oil spills. Oil spills are highly unlikely unless the development and production stage is reached. Should oil spills occur, their effects on salmon, other fish, and invertebrates are expected to be minor, although there could be major effects on the red king crab population (see Sec. IV.B.1.a.(1)). Effects on regional populations of marine and coastal birds are expected to be moderate. Minor effects are anticipated for seals and sea lions and for bear and caribou. Higher levels of localized effects could occur in each of these biological populations. In Unalaska, the combined effects would be marginal, especially compared to the effects brought about by the growth of the groundfish industry (see Sec. III.C.4.).

(2) *Bristol Bay Region:* The Cold Bay air facility is anticipated to be the only support base in the Bristol Bay region that is used in the exploration phase of lease sale activities, as noted in the previous discussion. With the exception of this facility and the LNG and oil terminals at Balboa Bay, no other OCS-related facilities are expected

to be established in the Bristol Bay region. The potential effects of the terminals constructed at Balboa Bay for the development and production stages of activity are discussed in the next section (Alaska Peninsula subregion). For the region as a whole, increased pressure on subsistence resources from increased OCS-associated population would be minimal and relatively inconsequential due to the general absence of such population in the region.

There is a relative absence of direct effects from oil-spill contacts with land segments and biological resource areas in the Bristol Bay region (see Fig. IV-11 and Sec. IV.B.1.b.(4)). The probability of contact is low (1%), except for the Port Moller area, which is discussed in the next section. Indirect effects from oil spills on subsistence-use patterns could accrue if subsistence resources or habitats were tainted by a spill or if a tainting scare were to cause a closure or curtailment of the commercial salmon fisheries along the Alaska Peninsula or in Bristol Bay. The latter case could cause increased pressures or marine- and terrestrial-subsistence resources as a short-term strategy for dealing with the income shortfall (see Sec. IV.B.1.b.(4) for details); however, these effects would be long-term and relatively insignificant for the population as a whole.

(3) *Lower Alaska Peninsula Subregion:* The lower Alaska Peninsula subregion could be more affected by development and production as a result of the proposed lease sale than other parts of the Bristol Bay region because of the proximity of the lease sale area, the extension of a pipeline from the lease sale area through Port Moller, and the designation of Balboa Bay as a potential site for major oil and gas terminals. The communities involved include False Pass, Nelson Lagoon, Port Heiden, King Cove, Sand Point, and Cold Bay. Nelson Lagoon could experience some temporary changes in subsistence-use patterns. For example, there could be an increased need for caribou if salmon were too tainted to be used for human consumption. These changes would be marginal (see Sec.

IV.B.1.b.(4)). Additional service industries could be attracted to Sand Point if the Balboa Bay terminals were constructed. However, the level of effect from residential-population increases during the development and production stages would be marginal because of the relatively plentiful salmon and marine resources. Terrestrial wildlife would not be affected because these animals are hunted primarily on the mainland (air access to the lower peninsula is expensive). The terminal facilities and accompanying tanker traffic could pose a minimal level of risk to marine resources from oil-spill events and chronic discharges near Sand Point; however, subsistence-use patterns at Sand Point could be affected less by direct changes in subsistence-resource abundance or distribution than by indirect effects among segments of the population if the commercial salmon fishing industry were affected. Some indirect, short-term, minor effects on subsistence-use patterns could occur during development and production from tainted fish harvested in the commercial salmon-fishing industry. Marginal commercial fishermen would experience the most direct effects due to the tenuous relationship between cash- and subsistence-income production (see Sec. IV.B.1.b.(4)). The marginally successful fisherman of the lower Alaska Peninsula subregion is likely to be a resident of the larger communities, such as King Cove and Sand Point. The oil-spill-risk analysis shows a relative absence of direct oil-spill contacts with the shore of Bristol Bay or the lower Alaska Peninsula, with the exception of the Port Moller area. South of the Alaska Peninsula, the oil transshipment terminal at Balboa Bay (and associated tanker traffic) contributes a 7-percent probability that an oil spill of equal to or greater than 1,000 barrels could occur. The most likely number of spills for the southern side of the Alaska Peninsula is zero (see Table IV-10 for oil-spill data for the terminal facility).

• *Lease Sale:* The leasing action and associated preliminary activities prior to exploration would have no effect on and

would not significantly reduce the populations of harvestable resources in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Exploration:* Exploration activities would not significantly reduce the populations of harvestable resources in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Development and Production:* The development and production stages would not significantly reduce the populations of harvestable resources in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

b. *Potential to Reduce the Availability of Resources by Alteration of Their Normal Distribution Patterns:* The limited scope and duration of exploration activities carried out from Unalaska and Cold Bay are not expected to produce significant effects on subsistence through the alteration of normal resource-distribution patterns. Given the extensive distribution and volume of subsistence-fishery and marine mammal resources in the lease area, the ability of residents of the Bristol Bay region or the lower Alaska Peninsula subregion to harvest subsistence resources during the development and production stages would not be affected, and there would be no significant alteration of normal resource-distribution patterns (see Sec. IV.B.1.a.). The widespread distribution of salmon and other fisheries resources, for example, is discussed in Sec. IV.B.1.a.(1). Such should also be the case with the location of the support facilities, such as marine- and air-support facilities and the oil and gas transshipment terminals.

In Cold Bay and Unalaska, the offshore support facilities do not represent a new function at the site and thus would not alter the relative distribution of subsistence resources.

New transshipment-terminal functions at Balboa Bay could be sited to avoid disturbance of normal subsistence-resource-distribution patterns. With terrestrial mammals, neither brown bears nor caribou are likely to be affected substantially by offshore OCS activities. Because of the distribution of brown bears and caribou, and because of seasonal-use areas and projected development, effects are likely to be quite localized and of minor importance both locally and regionally (see Sec. IV.F.6.a.).

• *Lease Sale:* The leasing action and associated preliminary activities prior to exploration would not alter normal subsistence-resource-distribution patterns in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Exploration:* Exploration activities would not alter normal distribution patterns or significantly reduce the availability of subsistence resources in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Development and Production:* The development and production stage would not change normal distribution patterns or significantly reduce the availability of subsistence resources in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

c. *Limitation of Access to Subsistence Resources:* Physical access to subsistence-resource-harvest sites is not likely to be limited by activities associated with the lease sale, exploration, or development and production for residents of the Bristol Bay region or the lower Alaska Peninsula subregion. Access to subsistence-fishery and marine mammal resources is either from the shore or via boat to harvest areas generally within state waters (within 3 miles of shore). The marine and air-support functions specified

in the scenario at Unalaska and Cold Bay would not limit access to subsistence resources for residents of these communities beyond existing conditions, because these functions are consistent with the primary historic functions of these communities. There are no residents of Balboa Bay, where the scenario establishes oil and gas transshipment terminals. The pipeline to Balboa Bay "is" not likely to limit access to subsistence resources because it should represent only a minor obstacle to travel even if located at grade level.

• *Lease Sale:* The leasing action and associated preliminary activities prior to exploration would not limit access to subsistence resources in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Exploration:* Exploration activities would not significantly limit access to subsistence resources in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Development and Production:* Development and production phases would not significantly limit access to subsistence resources in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

2. *Availability of Other Lands:* Within the North Aleutian Basin lease sale area, there are no other lands that could be used for the proposed lease sale other than those discussed in the alternatives. The Secretary previously removed 83 percent of the initial proposed lease sale area from Sale 92, thus eliminating other available lands. This document has reviewed and evaluated all other reasonable options for leasing and development in the area. The North Aleutian Basin was expressly included in the July 1982 5-year program as an area to be considered for leasing.

3. *Alternatives:* This section on alternatives is concerned with an evaluation of alternative ways to accommodate the proposed action rather than an evaluation of other sites for the proposed action. Alternative IV provides a reduction in direct risk to locally available subsistence resources and habitats along the northern side of the Alaska Peninsula generally, and in the vicinity of Port Moller in particular. However, considering that the level of such risk from the proposal is relatively low (assessed at a negligible level) to begin with, additional reduction of risk only marginally reduces potential effects on subsistence-use patterns on the Alaska Peninsula. Beyond block deferral alternatives, an alternative to an oil and gas lease sale would be consideration of alternative-energy sources. The feasibility of other national energy sources and of the no-sale alternative are discussed in Appendix I and Section IV, respectively (incorporated in this section by reference). A number of mitigating measures, however, could be adopted to provide greater protection for subsistence use. Relevant potential lease sale stipulations proposed with the sale include the orientation program, the measure on the protection of biological resources, and the requirements that deal with wellheads, pipelines, and the transportation of hydrocarbons. The orientation-program stipulation would make oil industry workers aware of the special environmental, social, and cultural values of the regional residents and the environment. The orientation program would help to promote an understanding and appreciation for local community, customs, and lifestyles of Alaskans. It also would provide necessary information to personnel which could reduce behavioral disturbance to wildlife. The stipulation on protection of biological resources provides for information gathering and the application of appropriate protective measures to biological populations or habitats affected by lease operations. The requirements regarding wellheads, pipelines, and hydrocarbon transportation are designed to minimize adverse biological effects and thus

protect resources that may be used for subsistence purposes. Information to Lessees (ITL) includes a variety of topics that could additionally serve to mitigate adverse effects on subsistence resources and uses (See Sec. II.C.1.b.(2) for a discussion of ITL's).

4. Discussion:

• *Lease Sale:* The actual lease sale for North Aleutian Basin Sale 92 is an administrative action consisting of offers, bids, evaluations, and lease awards. The only oil- and gas-related activities that occur as a direct result of awarding leases are preliminary activities. As defined in 30 CFR 250.34, such activities do not result in any significant adverse effect on the natural resources of the outer continental shelf and would not have a significant effect on subsistence uses in any of the four areas of the sale analysis (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Exploration:* Exploratory activities, including seismic investigations undertaken as a result of leases and exploratory drilling, could occur as a consequence of the lease sale, and their possible effects have been examined. These activities could result in effects from site-specific seismic investigations, exploratory drilling, accidental spills, discharge of formation waters and drilling muds, noise, traffic from boat- and aircraft-support activities, onshore support facilities, local population increases, and oil- and gas-related employment. The exploratory operations from other Bering Sea drilling (for Sales 57 and 83) have been considered in preparing this Section 810 analysis and have been found to have no significant effect on subsistence uses. Similarly, no significant restrictions are expected in any of the four areas of Sale 92 (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Development and Production:* Development and production activities would be expected to occur if economically recoverable hydrocarbons are discovered. Finding economic

uses. Similarly, no significant restrictions are expected in any of the four areas of Sale 92 (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Development and Production:* Development and production activities would be expected to occur if economically recoverable hydrocarbons are discovered. Finding economic quantities of recoverable oil and the development and production of that oil is given a 20-percent chance of happening. Development and production activities consist of the drilling of additional wells; the construction of pipelines and storage facilities, loading facilities, and shore bases; and tanker traffic and planned and accidental discharges. Of these activities, oil spills have the most potential to have unavoidable adverse effects on subsistence uses; other activities are of less concern.

This Section 810 evaluation assumes that, if the development and production stage occurs, 1 oil spill of 1,000 barrels or greater will occur during the productive life of the field. There is a 20-percent chance of discovering oil in commercial quantities, and a 61-percent chance of an oil-spill of 1,000 barrels or greater occurring if such quantities of oil were discovered.

Given these probabilities, it is extremely unlikely that an oil spill would occur and contact the nearshore populations of mammals, fish, and birds used for subsistence in Cold Bay, Unalaska, the Bristol Bay region, and the lower Alaska Peninsula subregion. The probability of such an event occurring is generally less than 1 percent, except in the Port Moller area. Significant changes in distributions of subsistence species or limitations to access are not expected to occur as a result of the proposal. For these reasons, this evaluation demonstrates that no significant restriction of subsistence uses in Cold Bay, Unalaska, the Bristol Bay region, and the lower Alaska Peninsula subregion is foreseeable as a result of the proposed lease sale.

Given the oil-spill-risk probabilities for Sale 92, it is not likely that a spill would cause a subsistence species to become unavailable to a community for more than 1 year, or that the spill would reduce the total amount of subsistence foods consumed by humans in the affected community. This Section 810 analysis demonstrates that significant changes in distributions of subsistence species or significant limitations of access to subsistence resources are not likely or expected to occur as a result of proposed Sale 92.

5. Findings:

• *Lease Sale:* The lease sale and associated preliminary activities that would occur prior to exploration for Sale 92 are unlikely to significantly restrict subsistence uses in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Exploration:* Sale 92 exploratory activities are unlikely to significantly restrict subsistence use of marine and terrestrial resources in the lease sale area or in any of the onshore areas likely to be affected (Cold Bay, Unalaska, Bristol Bay region, lower Alaska Peninsula subregion).

• *Development and Production:* Included above is an analysis of the development and production stage of the proposal based on hypothetical development scenarios and a 21-percent possibility of finding economically recoverable oil. Based on this analysis, the development and production stage of the lease sale is unlikely to significantly restrict subsistence uses in Unalaska and Cold Bay or in the Bristol Bay region and lower Alaska Peninsula subregion. No activities that would restrict subsistence uses are currently proposed or anticipated. Although this finding is based upon reasonable and valid assumptions, there is a great deal of uncertainty about the precise location, timing, or level of intensity of either exploration or development and production. Therefore, if leases were sold and exploration

plans were submitted to the MMS for review and approval, the possible effects on subsistence uses would be reanalyzed pursuant to Section 810 of the ANILCA before exploration plans were approved. If discoveries were made and development and production plans were submitted to the MMS, these plans also would be subjected to review under Section 810 prior to approval.

APPENDIX H

List Required by Rule 28.1

Amoco Production Company

Amoco Company
Amoco Corporation
Amoco Credit Corporation

Analog Devices, Inc.
Cetus Corporation
Cyprus Mines Corporation
Gigabit Logic, Inc.
Packet Technologies, Inc.
Automating Peripherals Ltd.
Blackfeet Indian Writing Co.
F M 4 Gila River Corporation
Highland Community Bank
High Life Helicopter, Inc.
Superphone Corporation
TAC Systems
Tenco Hydro, Inc.
Watson Laboratories, Inc.

Arco Alaska, Inc.
Atlantic Richfield Company

ABE Beverage, Inc.
Agro International, S. de R. L. de C.V.
Almeg Extrusion Company, Inc.
Alpart Farms (Jamaica), Ltd.
Alumina Contractors, Ltd.
Alumina Partners of Jamaica
Alyeska Pipeline Service Company
Ambler Mining Company
Anaconda Exploration New Zealand Limited
Anaflex, S.A. de C.V.
Anamax Mining Company
Anamet, S.A. de C.V.

ARCO Australia Coal Pty., Ltd.
ARCO Chemical IBERICA, S.A.
ARCO Oil Limited
ARCO Solar Nigeria, Ltd.
Arilan, S.A. de C.V.
Arpet Petroleum Limited
A/S Skaland Graftiverk
Atlantic Richfield Oil Limited
Atlantic Richfield de Mexico, S.A. de C.V.
Aughinish Alumina, Ltd.
Aughinish Estates Limited
Aughinish Finance, Limited
Aughinish Property (Nominees), Limited
Badger Pipeline Company
Bingham Development Company
Black Lake Pipe Line Company
Blair Athol Coal Pty., Limited
British American Metals Company, Limited
Candel International, Limited
Caribou-Chaleur Bay Mines Ltd.
Caribou-Smith Mines Ltd.
Chile Copper Company
Cobre de Hercules, S.A.
Cobre de Mexico, S.A.
Cobrecel, S.A. de C.V.
Colonial Pipeline Company
Compania Minera Dos Republicas S.A. de C.V.
Compania Minera Kappa, S.A.
Compania Minera Penacobre, S.A.
Compania de Petroleo Ganso Azul, Ltda.
Cook Inlet Pipe Line Company
Copro San Luis, S.A. de C.V.
Curragh Coal Sales Co. Pty. Ltd.
Delaware Bay Transportation Company
Dexter de Mexico, S.A.
Dixie Pipeline Company
East Texas Salt Water Disposal Co.

85819 Candada Limited
Eisenhower Mining Company
Empresa de Comercio Exterior Mexicano, S.A. de C.V.
Ericsson
Flower Street Limited
Gravity Adjustment, Inc.
Greater Pacific Limited
Griffith-Consumers Company
Hardy Oil Company
Imperial Eastman de Mexico, S.A.
Impulsora De Cobre, S.A. de C.V.
Indelta, S.A. de C.V.
Industrias Tecnos, S.A. de C.V.
Iricon Agency Ltd.
Jamaica Alumina Security Company Ltd.
Kenai Pipe Line Company
Kronos, Computation y Teleproceso, S.A. de C.V.
Kuparuk Transportation Capital Corporation
Kuparuk Transportation Company
Las Quintas Serenas Water Company
Lavan Petroleum Co.
Lingobronce, S.A.
Manufacturas de Cintas Metalicas, S.A.
Manufacurera Mexicana De Partes Para Automoviles, S.A. de C.V.
Mayflower Mining Company
Mexicana de Cospeles, S.A. de C.V.
R. W. Miller (Holdings) Limited
Minera Anaconda Limitada
Montoro, Empresa Para La Industria Quimica
Nacional de Cobre, S.A.
New Bingham Mary Mining Company
Nihon Oxirane Company, Ltd.
Nordisk Mineselskab A/S
P. T. Arutmin Indonesia
Park City Ventures

Park-Cummings Mining Company
Park-Premier Mining Company
Participaciones Mexicanas, S.A. de C.V.
Platte Pipe Line Company
Prince Consolidated Mining Company
Productos Especiales Metalicos, S.A.
Productos Laminados de Cobre, S.A. de C.V.
Richfield U.K. Petroleum, Limited
Rodman, Inc.
Saudi Cable Company
Servicios Industriales Nacobre, S.A.
Sinclair (U.K.) Oil Company Limited
Sinclair Venezuelan Oil Company
Smoke House Copper Mining Company
Sociedade Anonima Marvin
Solar Energy Center (E.C.)
Solvamex, S.A. de C.V.
Stup & Costello, Inc.
SUMIARCO Company Limited
Swecomex, S.A.
Tecumseh Pipe Line Company
Texas-New Mexico Pipe Line Company
Transcobre, S.A. de C.V.
Trans Mountain Oil Pipe Line Company
Tubos Flexibles, S.A.
Union de Credito Industrial Vallejo, S.A.
United Park City Mines Company
The Walworth Company
West Mayflower Mining Company
William Prym de Mexico, S.A.

Chevron U.S.A. Inc.
BP-California Limited
BP-California (Grangemouth) Limited
Borco Towing Company Limited
C-W Properties, Inc.
Caltex Deutschland G.m.b.H.
Caltex Mediterranean Limited

Caltex Petroleum Corporation
Chevron Chemical S.A.
Chevron Chemical Company S.A.F.
Chevron Corporation
Chevron do Brasil Participacoes e Empreendimentos Ltda.
Compania de Petroleo Chevron S.A.
Cornwallis Arctic Oils Limited
Freeport Trading Company Limited
Glenwood Properties
Huntington Beach Company
Insecticidas Ortho, S.A.
Kenai Pipe Line Company
Kentucky Agricultural Energy Corporation
Later Chemicals Limited
Marine Agents and Brokers Limited
Orogil S.A.
P.T. Caltex Pacific Indonesia
Quimicas Ortho de California, Limitada
Refineria Petrolera de Guatemala-California, Inc.

Exxon Corporation
A.B.C.-Azienda Brianta Carburanti S.r.L.
Abu Dhabi Company for Onshore Oil Operations
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Aditivos Orinoco, C.A.
Administrative Industries Reliance S.A. de C.V.
Adria-Wien Pipeline Gesellschaft mit beschrankter Haftung
Aircraft Fuel Supply B.V.
Aishin Sekiyu K.K.
Alberta Products Pipe Line Ltd.
Al-Jubail Petrochemical Company
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Andian National Corporation, Limited
Arabian American Oil Company

Aramco Overseas Company
Aramco Services Company
A/S Futurum
Asakawa Sekiyu K.K.
Asociacion Civil "Academy La Castellana"
Association Petroliere, Belge
Atlas Supply Company
Atlas Supply Company of Canada Limited
Australian Synthetic Rubber Company Limited
Aviation Services Saudi Arabia Limited
Awaji Gas Nenryo Kabushiki Kaisha
Azienda Carburanti Lubrificanti Affini, S.p.A.-Milano (ACLAM)
Azuma Sekiyu K.K.
Bangkok Aviation Fuel Services Limited
Banshu Ekika Gas K.K.
Bayerische Erdgasleitung G.m.b.H.
Beaverhill Resources Limited
BEB Erdgas und Erdol GmbH, Hannover
Bel-Air Entreposage S.A.
Brigitta Erdgas und Erdol GmbH, Hannover
Bryan Woodbine Gathering Inc.
Building Products of Canada Limited
B.W.O.C., Inc.
Byron Creek Collieries (1983) Limited
Canada Wide Mines Ltd.
Carnduff Gas Limited
Castle Peak Power Company Limited
Champlain Oil Products Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Sekiyu Hanbai K.K.
Colmant Cuvelier Dodge S.A.
Commercial Polymers Pty. Ltd.
Compagnie d'Etancheite Africaine en Cote d'Ivoire S.A.
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliaire du Petrole
Comptoir Oyonnaxien des Combustibles (C.O.C.)

Computer Centrum Groningen B.V.
Daihatsu Sekiyu K.K.
Daiichi Kouyu K.K.
Daitsu Sangro K.K.
Demulsificantes Del Orinoco, C.A.
Dental Research Corporation
Depot Petrolier du Gresivaudan
Depots de Petrole Cotiers
Depots Petrolier de la Corse
Deudan-Holding GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited
Dixie Pipeline Company
D.O.C. Dutch Offshore Consortium B.V.
Dodge de Mexico S.A. de C.V.
Dukhan Service Company
E S F Limited
Eagle Kenso K.K.
East Japan Oil Development Company, Limited
East Texas Salt Water Disposal Company
Eiko Sekiyu K.K.
Elwerath Erdgas und Erdol Gmbh, Hanover
Elwerath Erdol und Erdgas AG
Emirates Oilfield Chemicals Company
Emori Sekiyu K.K.
Emsland-Erdolleitung G.m.b.H.
Energie Marketing Service GmbH (EMS)
Engycalor-Energia Calore S.r.L.
Entrepot Petrolier de l'Aveyron (E.P.A.)
Erdgas-Verkaufs-Gesellschaft m.b.H.
Escuela Las Morochas, C.A.
Esso Chemical Alberta Limited
Esso Chimie
Esso Energie G.I.E.
Esso Exploration and Production Angola Inc.
Esso Italiana S.p.A.

Esso Malaysia Berhad
Esso of Canada Limited
Esso Resources Canada Limited
Esso Reunion
Esso Societe Anonyme Francaise
Esso Standard Tunisie S.A.
Exact Reisebyra A/S
Exxon Chemical Pakistan Limited
Exxon S.r.L.
F. T. Giken Kabushiki Kaisha
FALCA S.p.A.
Federal Pacific Electric de Mexico S.A. de C.V.
Federal Pioneer Limited
Fed-Supremetch Limited
Ferngas Nordbayern G.m.b.H.
Ferngas Salzgitter GmbH
Forjas de Colombia, S.A.
415572 Ontario Inc. (operating as Kenton Steel)
Fuji Kogyo K.K.
Gasunie Engineering B.V.
General Bussan K.K.
General Highway K.K.
General Petrochemical Industries Limited
General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.
General Sekiyu Overseas Ltd.
General Shipping Co. Ltd.
General Unyu Kabushiki Kaisha
Geobutane-Lavera
Gewerkschaft Elwerath & Co. GmbH.
Gewerkschaft Erdol-Raffinerie Deurag-Nerag
Gilbarco do Brasil S.A.-Equipamentos
Goroku Sekiyu K.K.
Grande Ecaille Land Company, Inc.
Groupement Immobilier Petrolier
Groupement Petrolier Aviation
Groupement Petrolier du Finistere G.I.E.

Groupement pour l'Etude d'un Pipeline Bordeaux Toulouse
Hankyu Ferry K.K.
Hannoversche Erdolleitung G.m.b.H.
Hanshin Kyowa Sekiyu K.K.
Hayakawa Seikiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroschima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokushin Bussan K.K.
Hokuyu Sekiyu K.K.
Houston Regional Monitoring Corporation
Hydranten-Betriebsgesellschaft
Hydrierwerke Poelitz Aktiengesellschaft
I.C.I.O.M.-S.p.A.-Importazione Carboni Industris Olii Minerali
Imperial Oil Limited
The Imperial Pipe Line Company, Limited
Inada Ekka Gas Kabushiki Kaisha
Industrias Reliance S.A. de C.V.
Industry Promotion Enterprises Limited
Intecom, Inc.
Interface Mechanisms Inc.
Interprovincial Pipe Line (Alberta) Ltd.
Interprovincial Pipe Line Limited
Interprovincial Pipe Line (NW) Ltd.
Iranian Oil Participants Limited
Iranian Oil Service (Holdings) Limited
Iranian Oil Service Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions, Limited
Ivres Petroli Affini Gas (I.P.A. Gas) S.r.L.
Japan Butyl Company Limited
Japan Coal Liquefaction Development Company, Ltd.
Jersey Nuclear-Avco Isotopes, Inc.
K.K. Aizu General
K.K. Daimaru

K.K. General Sekiyu Hanbaisho
K.K. Genetech
K.K. Heian Sekiyu
K.K. Kanagawa Sekiyu Shokai
K.K. Kyoei Shosha
K.K. Kyowa Sekiyu Service
K.K. Marugo Izumasa Shoten
K.K. Nippatsu
K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Toko
K.K. Toresen
K.K. Uwano Sekiyu Shokai
K/S Statfjord Transport A/S & Co.
Kabushiki Kaisha Sankyo Plastics
Kai Tak Refuellers Company Limited
Kanto Kygnus Sekiyu Hambai K.K.
Karlsruhe-Stuttgart Rohrleitung Gesellschaft mbH
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keihin Kygnus Kabushiki Kaisha
Keiyo Sekiyu Hanbai K.K.
Kenya Petroleum Refineries Limited
Kepco Mfg. Inc.
Kibo Sekiyu Hanbai K.K.
Kinwa Sekiyu K.K.
Kobe Port Service Kabushiki Kaisha
Kobe Standard Sekiyu K.K.
Kowa Sekiyu K.K.
Kowloon Electricity Supply Company Limited
Kygnus Ekka Gas Kabushiki Kaisha
Kyngus Kosan Kabushiki Kaisha
Kygnus Marketing Service K.K.
Kyngus Sekiyu K.K.
Kyushu Eagle K.K.
LPL Investments, Inc.
La Compagnie Electrique Pioneer du Quebec, Inc.
Lakehead Pipe Line Company, Inc.
LEAG Aktiengesellschaft fur luzernisches Erdol

Leco Inc.
Les Docks Des Petroles d'Ambes
Limburgsche Maatschappij voor Gasdistributie Limagas N.V.
Long Beach Oil Development Company
Maasvlakte Olie Terminal N.V.
Maasvlakte Coal Terminal B.V.
Maatschappij voor Intercommunale Gasdistributie Intergas N.V.
Maatschappij voor Intercommunale Gasvoorziening in Oost-Brabant "OBRAGAS N.V."
Magota Sekiyu K.K.
Mainline Pipelines Limited
Makoto Sekiyu Kabushiki Kaisha
Maple Leaf Petroleum Limited
Maquinas de Coser y Bordar Sigma, S.A.
Mars-Alcatel, S.A.
Marugo Gas K.K.
Mediterranea Bitumi, S. p. A.
MEGAL FINCO
MEGAL GmbH
Meiji Sekiyu K.K.
MESBIC Financial Corporation of Houston
Mikawa Bussan K.K.
Mittelrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Montreal Pipe Line Limited/Les Pipe-Lines Montreal Limitee
NAM - K 7 B.V.
NAM - K 14 B.V.
NAM - K 15 B.V.
NAM/CLOMS-K 8/K 11 B.V.
NAM/CLOMS-L 13 B.V.
N.V. Nederlands Gasunie
NPC Services, Inc.
Nakabayashi Sekiyu K.K.
Nansei Oil Terminal K.K.

Nansei Sekiyu Kabushiki Kaisha
Native Venture Capital Co. Ltd.
Near East Development Corporation
Nederlandse Aardolie Maatschappij B.V.
Neptune Bulk Terminals (Canada) Ltd.
Nichimo Kabushiki Kaisha
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nikko Sangyo K.K.
Nippon Unicar K.K.
Nisku Products Pipe Line Company Limited
Nissei Sekiyu Kabushiki Kaisha
Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Norddeutsche Mineraloelwerke Stettin G.m.b.H.
Norddeutsche Oelleitungs-gesellschaft m.b.H.
Nordrheinische Erdgas Transport Gesellschaft mit beschrankter Haftung
Nord-West Oelleitung G.m.b.H.
Northward Developments Ltd.
Northwest Company, Limited
Nottingham Gas Limited
Office Prive d'Assurances et de Courtages
Offshore Medical Support Limited
Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Service Company of Iran
Oil Spill Response Limited
Oil Transport Company (Saudi Arabia) Limited
Oldenburgische Erdol Gesellschaft m.b.H.
107580 Canada Inc.
139675 Canada Limited
Osaka Propane Gas Hambai Kabushiki Kaisha
Osaka Sekiyu Gas Yuso K.K.
P. T. Stanvac Indonesia
Pars Investment Corporation
Peninsula Electric Power Company Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited

Petroleum Tankship Company, Inc.
Petrosvibri S.A.
Photonic Automation Inc.
Pinpoint Retail Systems Inc.
Pipe Line Services, Inc.
Plantation Pipe Line Company
Polder-Seehafen-Harburg GmbH
Portland Pipe Line Corporation
Potencia Industrial S.A.
Productos Lorain de Mexico S.A. de C.V.
Progas A/S
Raffinerie du Midi S.A.R.L.
Rainbow Pipe Line Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla S.A.
Reliance Electric & Engineering Company de Mexico S.A. de C.V.
Reliance Electric Limited
Reliance Electric S.A. (Spain)
Renix Co. Ltd.
Renown Building Materials Limited
Rheingas Erdgasleitungs-Gesellschaft m.b.H.
Rochevert Inc.
Rotterdam Antwerpen Pijpleiding (Belgie)
Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.
Ruhrgas Aktiengesellschaft
S.A. du Pipeline a Produits Petroliers sur Territoire Genevois (SAPPRO)
S.C.O.C. - Societa Commercio Olii Combustibili S. p. A.
S.O.P.-Societa Oleodotti Padani S.p.A.
Saitama Sekiyu Hanbai K.K.
Sakurajima Futo K.K.
Sanko Oil Kabushiki Kaisha
Sanyo Sekiyu K.K.
Saraco S.A.
Saudi Arabian Lube Additives Company Limited
Schubert KG

SEAG Aktiengesellschaft fur schweizerisches Erdol
Seibu Kygnus Sekiyu Hambai Kabushiki Kaisha
Seismic Industries A/S
Senpoku Oil Service K.K.
SERAM Societa per Azioni
Servacar Ltd.
Shehtah Drilling Limited
Shimoka Sekiyu Kabushiki Kaisha
Shimoyama Sekiyu K.K.
Shin-Nihon Yukagaku Kogyo K.K.
Shinohara Oil K.K.
Shizuoka Kanesho Hambai Kabushiki Kaisha
Smiley Gas Conservation Limited
Sociedad Anonima "Escuela Campo Alegre"
Sociedad de Inversiones de Aviacion
Sociedad Nacional de Oleductos Ltda.
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali-SARPOM
Societe Anonyme de la Raffinerie des Antilles
Societe Anonyme des Hydrocarbures
Societe Anonyme "Produits Lubrifants de Madagascar"-PROLUMA S.A.
Societe Belge de Transport par Pipeline
Societe Civile de Mustapha Algerie
Societe Civile de Participation pour la Destruction des Dechets Industriels (SOCDI)
Societe Civile Immobiliere "Courcelles-Etoile"
Societe Civile Immobiliere de la Croix au Chene
Societe Civile Immobiliere du 195 Avenue de Neuilly
Societe Civile Immobiliere Khariessa
Societe Civile Immobiliere "Kleber-Etoile"
Societe Civile Immobiliere "Les Casseaux-Bougainville"
Societe de al Raffinerie d'Alger
Societe de la Rafinnerie de Lorraine
Societe de Manutention de Carburants Aviation
Societe de Manutention de Carburants Aviation Dakar-Yoff, S.A.

Societe de Promotion et de Financement Touristique (CARTHAGO)
Societe d'Entreposage de San-Pedro
Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe d'Exploitation & de Developpement d'Operations Commerciales
Societe du Caoutchouc Butyl (SOCABU)
Societe du Depot Petrolier d'Hanconcourt
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe du Pipeline Sud-Europeen
Societe Esso de Recherches et d'Exploitation Petrolieres Esso Rep
Societe "Geomines-Caen"
Societe Havraise de Manutention de Produits Petroliers
Societe Hoteliere de la Petite Campagne
Societe Immobiliere Paris-Niel
Societe Ivoirienne d'Operations Petroliers S.A.
Societe Malgache de Raffinage
Societe Reunionnaise d'Entreposage
Socony-Standard-Vacuum Oil Company (Petroleum Maatschappij)
Southern Natural Gas Development Pty. Ltd.
Standard Kosan Kabushiki Kaisha
Standard Oil S.r.l.
Standard Service K.K.
Statfjord Transport A/S
Stockage Geologique de Gaz de Lavera
Suddeutsche Erdgas Transport Gesellschaft mit beschrankter Haftung
Sun East Compand Ltd.
Suntech Company, Ltd.
Supertex, Inc.
Svensk Petroleumlagring Tre Aktiebolag
Sydis, Inc.
Syncrude Canada Ltd.

Synergistics Chemicals Limited
System Plaza Kabushiki Kaisha
305120 Alberta Ltd.
346877 Ontario Limited
TAR-Tankanlage Rumlang AG
TBN Tanklager-Betriebsgesellschaft Nurnberg mbH
Taglu Enterprises Ltd.
Taihei Bussan K.K.
Taiko Sekiyu K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Taketsuru Yugyo K.K.
Tanaka Sekiyu Hanbai K.K.
Tankanlage A.G., Mellingen
Tanklager Altishausen A.G.
Tanklager Gesellschaft
Tanklager Gesellschaft, Koln
Tanklager-Gesellschaft Tegel
Tanklager Lechelles I S.A.
Tanklager Taegerschen AG
Tecumseh Gas Storage Limited
THUMS Long Beach Company
Thyssengas G.m.b.H.
TIBA Speditions GmbH
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Company, Limited
Tohpren Co. Ltd.
Tokai General Sekiyu Hanbai K.K.
Toko Sekiyu K.K.
Toledo Scale Company de Mexico S.A. de C.V.
Toledo Werk GmbH
Tonen Energy International Corp.
Tonen Maintenance K.K.
Tonen Sekiyukagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology K.K.
Toscana Lavorazione Petroli S. p. A.
Towa Compounding Co. Ltd.

Towa Sekiyu K.K.
Toyoshina Film Company, Ltd.
Trans-Arabian Pipe Line Company
Transalpine Finance Holdings S.A.
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Transgaz Lavera
Tsurumaru Unyu K.K.
Turkish Petroleum Company, Limited
UBAG-Unterflurbetankungsanlage Flughafen Zurich
Union des Raffineurs Belges "U.R.B."
Van Salt Water Disposal Company
W.A.G. Pipeline Pty. Ltd.
Wako Jushi Kabushiki Kaisha
Wako Kasei Kabushiki Kaisha
Wartempomp Nederland B.V.
Westdeutsche Erdolleitungs-G.m.b.H.
Westgas G.m.b.H.
Westgastransport B.V.
Williamsport Properties Limited
Winnipeg Pipe Line Company Limited
Wohnungsbaugesellschaft, Steimbke-Rodewald G.m.b.H.
Worex Distribution
Worex et Cie
Wrenford Insurance Company Ltd.
Yasaka Sekiyu K.K.
Yellowstone Pipe Line Company
Yoshimi Gas Kabushiki Kaisha
Yuai Sekiyu K.K.
Yugen Keisha Nishi Kobe Bosai Center
Mobil Exploration & Producing Services, Inc.
Mobil Corporation
Mobil Oil Corporation
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Adria-Wien Pipeline Gesellschaft m.b.H.
AIMCO (ALPHA) Shipping Company
AIMCO Holdings Limited

AIMCO (OMEGA) Shipping Company Ltd.
Aircraft Fuel Supply B.V.
Airtankdienst Koln
AK Chemie GmbH
AK Chemie GmbH & Co KG
Akauma Rekisei Kogyo Kabushiki Kaisha
Alexandroupolis Petroleum Installation S.A.
Allied Asphalts Limited
Alpa Alet Ve Dayanikli Tuketim Mamulleri Pazarlama, A.S.
Altona Petrochemical Company Limited
Alyeska Pipeline Service Company
Ammenn GmbH
Ankara Gaz Satis Anonim Sirketi
Arabian American Oil Company
Arabian Energy Company Limited, The
Arabian International Maritime Company Limited
Arabian International Maritime Company
The Arabian Petroleum Supply Company (S.A.)
Arabian Shipping & Trading Company S.A.
Arabian Trading Company S.A.
Aral Aktiengesellschaft
A/S Fjellvegen
The Associated Octel Company Limited
Associated Octel Company (Plant) Limited
ATAS-Anadolu Tasfiyehanesi Anonim Sirketi
Atlas Saraha S.A.
Australian Synthetic Rubber Company Limited
Autobahn-Betriebe Gesellschaft m.b.H.
Aviation Fuel Services Limited
Aygaz Anonim Sirketi
B.V. Beheeramaatschappij MOBEM
Bayerische Erdgasleitung GmbH
Bayerische Mineral Industrie A.G.
Beer GmbH
Beer GmbH & Co. Mineralol-Vertriebs-KG
Bin Sulaiman Mobil Towers

Bosques Nacionales, Ltda.
Bow Fortune S.A.
Bow Spring Shipping S.A.
Bow Star S.A.
Brussels Airfuels Service S.C.
Buffalo River Improvement Corporation
Canner's Steam Company, Incorporated
Cansulex Limited
Canyon Reef Carriers, Inc.
Cartoenvases Valencia, S.A.
Carton de Colombia, S.A.
Carton de Venezuela, S.A.
Cartones Nationales, S.A.
CAS (Combined Automation Systems) B.V.
Celmisia Shipping Corporation
Celulosa y Papel de Colombia, S.A.
Central African Petroleum Refineries (Pvt) Limited
Central Kagaku Kabushiki Kaisha
Cercers S.A.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Chuo Nenryo Gas Kabushiki Kaisha
Colombianos Distribuidores de Combustibles, S.A. (CODI)
Colonial Pipeline Company
Comet-Brennstoffdienst GmbH
Commercial Polymers Pty. Ltd.
Commodore Maritime Company, S.A.
Compagnie Africaine de Transport Cameroun
Compagnie D'Etreposage Communautaire
Compagnie Rhenane de Raffinage
Compagnie Senegalaise des Lubrifiants (C.S.L.)
Compania Colombiana de Empaques Bates, SSA
Compania Colombiana De Forestacion S.A.
Compania de Lubricants de Chile Limitada (Copec-Mobil Ltda.)
Compania Mexicana de Especialidades Industriales, S.A. de C.V.
Consortium Raymond Duez

Constructora Calle 70, S.A.
Cook Inlet Pipe Line Company
Corrugadora de Carton, S. A.
Cyprus Petroleum Refinery Limited
D. Muhlenbruch GmbH
D. Muhlenbruch GmbH & Co. KG
Dai Nippon Jushi K.K.
Dearborn Land Company
De. Ba. S.p.A.-Industria Petrolifero Deposito di Bari
Depot Petrolier de Mourepiane
Depot Petrolier du Gresivaudan
Depot de Petrole Cotiers
Depots Petroliers de La Corse (DPLC)
Deutsche Pentosin-Werks GmbH
Deutsche Transalpine Oelleitung GmbH
Dicomi S.r.l.
Dixie Pipeline Company
Dukhan Services Company
East Japan Oil Development Company Ltd.
Eastern Lease Company Ltd.
East Texas Salt Water Disposal Company
Emoleum (Asphalts) Limited
Energas S.r.l.
Entrepot Petrolier de Chambery
Entrepot Petrolier de Dijon
Entrepot Petrolier de Mulhouse (E.P.M.)
Entrepot Petrolier de Nancy
Entreprise Jean Lefebvre
Erdgas-Verkaufs-Gesellschaft GmbH
Erdoel-Lagergesellschaft mbH
Erdoel-Raffinerie Neustadt GmbH & Co. oHG
Erdoelbetrieb Reitbrook
Establissments Bouthenet
Ets. Le Goff
Europetrol S.p.A.
Faavang Autoverksted A/S
FACEL

Fairwind Maritime Company, S.A.
Felix Oil Company
Fibil, S.A.
Fibras Internacionales de Puerto Rico, Inc.
Filtros De Costa Rica S.A.
Finsbury Printing Limited
Frome-Broken Hill Company Proprietary Limited
Fruehmesser Mineraloelhandels GmbH & Co. KG
Fruehmesser GmbH
Fuso Operations Kabushiki Kaisha
Futuro Enterprises (Christchurch) Ltd.
Futuro Homes (N.Z.) Ltd.
Gatwick Refueling Services Limited
Gas Aletleri Anonim Sirketi
Geomines-Caen
Geovexin
Ghana Bunkering Services Limited
Goteborgs Branslesortering AB
Groupement Immobilier Petrolier G.I.P.
Groupement Petrolier Aviation G.P.A.
Groupement Petrolier De Brest (GPB)
Handelmaatschappij Hugenholtz & Co. B.V.
Haniel Handel GmbH
H. van der Heijden Service Stations B.V.
Heizoel-Handelsgesellschaft mbH
Hellas Gas Storage Company S.A.
Hormoz Petroleum Company
Hydranten-Betriebs-Gesellschaft, Flughafen Frankfurt
Imbert G. Distribution De Produits Petroliers
Inmunizadoras Unidas, S. A.
Industria De Carbon Del Valle Cauca, S.A.
Industria Interamericana De Filtros Ltda. (INTERFIL)
Iranian Oil Participants Limited
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions Limited

Iraq Petroleum Transport Company Limited
Iside, S.p.A.
Istanbul Petrol ve Makine Yaglari Limited Sirketi
Italoil S.p.A.
Japan Airport Fueling Service Co. Limited
J.E.C.O.P.
K.K. Sankyo Plastics
K.K. Toresen
Kanto Kygnus Sekiyu Hambai K.K.
Karl Storz GmbH & Co. KG
Kawasaki Kygnus Sekiyu Hambai K.K.
Keihin Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sea-Berth Company, Limited
Kettleman North Dome Association
Klaus Koehn GmbH
Klaus Koehn GmbH & Co. Mineraloel KG
Kobe Port Service Kabushiki Kaisha
Kurt Ammenn GmbH & Co. K.G.
Kygnus Ekika Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Sekiyu Kabaushiki Kaisha
Kyokyto Petroleum Overseas, Ltd.
Kyokuto Sekiyu Kogyo Kabushiki Kaisha
Leporati S.p.A.
Les Supermarches De Cote D'Ivoire
Likit Petrol Gazi ve Yakit Ticaret A.S.
Loba Chemie Gesellschaft mbh
Lubland Limited
Lubricantes del Sur, S.A.
Marceaux & Cie
Matoo Tankers (U.K.) Limited
Maury Manufacturing Company, Inc.
Mediterranean Refining Company
Meentzen & Franke GmbH & Co.
Mertl GmbH
Mineralol-Handels-Gesellschaft Mbh
Mobil Atlas Sociedad Anonima de Capital Variable

Mobil Catalysts Corporation of Japan
Mobil Comercio, Industria e Servicos Ltda.
Mobil Gaz-Mobil Petrol Gazlari Anonim Sirketi
Mobil Korea Lube Oil Industries Inc.
Mobil Motor Rest AG
Mobil Nile Oil Company
Mobil Oil Gabon
Mobil Oil Ghana Limited
Mobil Oil Maroc
Mobil Oil Nigeria Limited
Mobil Oil Nord-Africaine
Mosul Petroleum Company Limited
Motel Rest SA
Mt. Marrow Blue Metal Quarries Pty.
Near East Development Corporation
Neptune Bulk Terminals (Canada) Ltd.
New Zealand Refining Company Limited, The
New Zealand Synthetic Fuels Corp. Ltd.
New Zealand Synthetic Fuels (Housing) Corporation Limited
Nichimo Oil (Bermuda) Co., Ltd.
Nichimo Sekiyu Seisei Kabushiki Kaisha
Nippon Unicar Company Limited
Norddeutsche Erdgas-Aufbereitungs GmbH
Nottingham Gas Limited
Nuova Europetrol S.p.A.
N.V. Rotterdam-Rijn Pijpleiding Maatschappij
N.V. Socony-Standard-Vacuum Oil Company
Occidental de Empaques, Ltda.
Octel Associates
Octel S.A.
Oilkol (Proprietary) Limited
Oil Service Company of Iran (Private Company)
Oldenburgische Erdoel Gesellschaft mit beschrankter Haftung
Olympic Pipe Line Company
Osage Pipe Line Company

P.T. Arun Natural Gas Liquefaction Company
P.T. Berau Coal
P.T. Stanvac Indonesia
Paloma Pipe Line Company
Pars Investment Corporation
Paul Harding Mineralole GmbH & Co. KG
P.6 Groep B.V.
Perretti Petroli S.p.A.
Petrocab
Petrogas Processing Ltd.
Petroleum Development (Cyprus) Limited
Petroleum Refineries (Australia) Proprietary Limited
Petroleum Services (Middle East) Limited
Petroleum Tankship Company Inc.
Petrol Fuel S.p.A.
Petromin Lubricating Oil Co.
Petromin Lubricating Oil Refining Company
Petromin-Mobil Yanbu Refinery Company Ltd.
Pipe Line Banal de La Goulette
Plegadizos para la Industria S.A.
Poly Oil Chimie (P.O.C.)
Qatar Petroleum Company Limited
Qualbank, Inc.
Rainbow Pipe Line Co., LTD
Reforestadora Andina, SA
Reforestadora del Cauca, S.A.
Rhodes Petroleum Installation S.A.
Rivers Court Estates, Limited
Road Binders (Proprietary) Limited
Rohol-Aufsuchungs Gesellschaft mbH
Rundel Mineralolvertrieb GmbH
Samarco (Alpha) Shipping Company
Samarco (Beta) Shipping Company
Santa Clara Waste Water Company
Sanwa Kasei Kogyo Kabushiki Kaisha
Sarni S.p.A.
Saudi Arabian Maritime Company

Saudi Can Company, Ltd., The
Saudi Chemical Industries Company Limited
Saudi Maritime Company Ltd.
Saudi Tankers Limited
Saudi Yanbu Petrochemical Company
Schubert Kommanditgesellschaft
Segher de Mexico, S.A. de C.V.
Seibu Kygnus Sekiyu Hambai Kabushi Kaisha
SENERCO
Seram Societa per Asioni (S.p.A.)
Sierra Leone Petroleum Refining Company Limited, The
Sociedad Calle 67, Ltda.
Sociedade Portugal Marrocos SARL
Societe Italiana per L'oleodotto Transalpino, S.p.A.
Societe Africane de Raffinage
Societe Alfred Ott & Cie
Societe Belge de Transport par Pipeline S.A.
Societe Camerounaise des Depots Petroliers (S.C.D.P.)
Societe Camerounaise Equatoriale De Fabrication De Lubrifiants "S.C.E.F.L."
Societe Civile de Mustapha
Societe Civile Immobiliere Courcelles-Etoile
Societe Civile Immobiliere de Construction de 34 Avenue du General Loclerc a Boissy-St-Leger
Societe Civile Immobiliere de Construction "La Residence Brune"
Societe Civile Immobilere du 10 Bd. de la Republique A La Garenne-Colombes
Societe Civile Immobiliere Kleber-Etoile
Societe Civile Immobiliere La Fontaine Saint Lucien
Societe Dahomeenne d'Entreposage de Produits Petroliers
Societe d'Armement Fluvial et Maritime "SOFLUMAR"
Societe de Construction & de Gestion CB 12
Societe de Distribution Castelroussine (SODICA)
Societe de Gaz D'Oceanic (SOGADOC)
Societe de Gastion des Stocks Petroliers de Cote D'Ivorie

Societe de Manutention de Carburants Aviation (S.M.C.A.)
Societe de Manutention de Carburants Aviation Dakar-Yoff
Societe de Manutention de Carburants Aviation de Tahiti (SOMCAT)
Societe de Materialx d'Etanchoitze Pour Le Entreprises (Maple)
Societe d'Entreposage de Bobo-Dioulasso (S.E.B.)
Societe d'Entreposage d'Hydrocarbures de Bingo (SEHBI)
Societe d'Entreposage de San Pedro (SESP)
Societe d'Entreposage de Petrolier Oau Brundi
Societe d'Habitations a Loyer Modere de la Seine Maritime
Societe des Bitumes et Cut-Backs du Cameroun
Societe Des Huiles Lemahieu
Societe de Pipe-Line Sud-Europeen
Societe Francaise Stoner-Mudge
Societe Gabonaise d'Entreposage de Produits Petroliers
Societe Gabonaise de Raffinage
Societe Industrielle des Asphaltes et Petroles de Lattaquie (Syrie) S.A.
Societe Ivoirienne de Fabrication de Lubrifiants (S.I.F.A.L.)
Societe Ivoirenne de Raffinage
Societe Mauritaneinne d'Entreposage de Produits Petroliers
Societe Malienna D'Entreposage (SME)
Societe Nationale de Raffinage (Sonara)
Societe Nouvelle pour l'Epuration des Huiles de Transformateurs-Septra
Societe Pizo De Formulation De Lubrifiants (PIZOLUB)
Societe Tahitienne de Depots Petroliers
Societe Tchadienne D'Entreposage de Produits Petroliers
Societe Togoliase d'Entreposage (STE)

Sonarep (South Africa) (Proprietary) Limited
SONEX
South African Oil Refinery (Proprietary) Limited
South Saskatchewan Pipe Line Company
Stratfjord Transport A.S.
Sydney Metropolitan Pipeline Pty. LTD
Syria Petroleum Company Limited
System Plaza Inc.
T.R. Miller Mill Company, Inc.
Tankbau GmbH
Tanklagergesellschaft Koln-Bonn
Tecklenburg GmbH
Tecklenburg GmbH & Co. Energiebedarf K.G.
Thailand Lubricant Products Limited
Thailand Solvent Products, Ltd.
Thums Long Beach Company
T. M. Duche Co., Inc.
Toa Nenryo Kogyo Kabushiki Kaisha
Tohko Plastics Co., Ltd.
Tonen Energy International Corp.
Tonen Maintenance Kabushiki Kaisha
Tonen Sekiyu Kagaku Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Technology Kabushiki Kaisha
Total Centraficaine de Gestion (TOCAGES)
Toyoshina Film Co., Ltd.
Tradewind Maritime Co., S.A.
Transalpine Finance Holdings S.A.
Transalpine Celleitung in Oesterreich Gesellschaft m.b.H.
Trans-Arabian Pipe Line Company
Transgas Umschlags-Lager-Und Transport Gesellschaft MbH
Turkish Petroleum Company Limited
Twifo Oil Palm Plantations Ltd.
UBAG Unterflur Betankungsanlage Flughafen Zurich
Union Grafica, S.A.
United Kingdom Oil Pipelines Limited

W.A.G. Pipeline Pty. Ltd.
Wako Kasei Kabushiki Kaisha
Wakohjushi Kabushiki Kaisha
Walton, Gatwick Pipeline Company Limited
Werner Weidemann Mineraloelvertrieb G.m.b.H.
Western Platinum Ltd.
West London Pipeline & Storage Limited
West Shore Pipe Line Company
Wilhelm Mertle GmbH & Co. KG
Wolverine Pipe Line Company
WSG, Warmeservice Gmbh
Wyco Pipe Line Company
Wymondham Oil Storage Co., Limited
Zaire Mobil Oil
Zaire Services Des Entreprises Petrolieres
Murphy Oil USA, Inc.
Murphy Oil Corporation
Butte Pipe Line Company
Collins Pipeline Company
Murphy Italy Oil Company
Murphy Oil Company, Ltd.
Ocean Drilling & Exploration Company
Ozard Fuels Corporation
T&M Terminal Company
Shell Western E&P, Inc.
Royal Dutch Petroleum Company
"Shell" Transport and Trading Company, p.l.c.
Shell Petroleum N.V.
SPNV Holdings, Inc.
Shell Oil Company
East Texas Salt Water Disposal Company
Fractionation Research, Inc.
Grande Ecallie Land Company, Inc.
Gravcap, Inc.
Heat Transfer Research, Inc.
Inland Corporation
LOOP, Inc.

Lucky Chance Mining Company, Inc.
MESBIC Financial Corporation of Houston
Oil Companies Institute for Marine Pollution
Compensation Limited
Oil Insurance Limited
Pecten Middle East Services Company
Pecten Cameron Company
Pioneer Equipment Co.
Plantation Pipe Line Company
Plastibeton, Inc.
Polycon Research, Inc.
Premix/E.M.S. Inc.
Quazite Corporation
Seadock, Inc.
Shell Petroleum N.V.
Shell Transport and Trading Company
Thums Long Beach Company
United Scientific, Inc.
Van Salt Water Disposal Company
West Shore Pipe Line Company
WIDC (Wyoming Industrial Development Corporation)
Wolverine Pipe Line Company

Standard Alaska Production Company
Standard Oil Company, The
Atlas Supply Company
Blossom Coal Company
Bledsoe Coal Leasing Company
BHL Inc.
BP Alaska Inc.
BP Communications Alaska, Inc.
BP Oil Inc.
Colonial Pipeline Company
Laurel Pipeline Company
Truckstops Corporation of America
East Texas Salt Water Disposal Company
Hinch Coal Mining Company
Huron Liberian Company

Inland Corporation
Kitt Energy Corporation
Mid-Valley Pipeline Company
Monitor Insurance Company Limited
Oil Insurance Ltd.
Old Ben Coal Company
Algers, Winslow & Western Railway Company
Old Ben Sales Company
Pike Coal Company
Prospect International, C.A.
Royal Land Company
Sohio Oil Company
S. Minerals, Incorporated
Kennecott Corporation
Apache Powder Company
Arendal Smelteverk a.s.
Arendal SIKA GmbH
Bingham Development Company
Braden Copper Company
Carborundum ASC Company
Hitachi-Carborundum Company
Carborundum Caribbean, Inc.
Chino Mines, Incorporated
Cobre Caribe S.A.
Denham Coal Management Pty. Limited
Dorr-Oliver Incorporated
D-O Holding Company, Inc.
Dorr-Oliver (Brasil) Ltda.
Dorr-Oliver Canada Limited
Dorcon (Canada) Limited
Dorr-Oliver Europe B.V.
Dorr-Oliver B.V.
Dorr-Oliver Company Limited
Dorr-Oliver (France) S.a.R.L.
Dorr-Oliver GmbH
Dorr-Oliver, S.A.
Dorr-Oliver Service B.V.

Equipos y Procesos S.A.
Dorr-Oliver de Mexico, S.A. de C.V.
Dorr-Oliver Engineering, Ltd.
Dorr-Oliver (India), Limited
Hindustan Dorr-Oliver Limited
Patel Filters Limited
Dorr-Oliver International Inc.
Dorr-Oliver Pty. Limited
Keeler/Dorr-Oliver Boiler Company
Electrometalurgia de Veracruz, S.A. de C.V.
E T Irrigating Canal Company
General Ionex Corporation
Kennco Explorations, (Canada) Limited
Kennco Explorations, (Western) Limited
Kenn Development Corporation
Kennecott Canada Limited
Kennarctic Explorations, Limited
Kennco (Stikine) Mining Limited
Stikine Copper Limited
QIT-Fer et Titane GmbH
Quebec Metal Powders Limited
Romaine River Railway Company
Richards Bay Iron and Titanium (Pty.) Limited
Stiffelio Investments (Proprietary) Limited
Tisand (Proprietary) Limited
Kennecott Communications Corporation
Kennecott Costa Rica S.A.
Kennecott Explorations (Australia) Ltd.
Carborundum Co. Singapore Pte. Ltd., The
Kennecott Realty Pty. Ltd.
Kennecott Explorations (New Zealand) Limited
Kennecott (South-West Africa) (Proprietary) Limited
Kennecott Mineracao Ltda.
Kennecott Minerals Company

Kennecott Santa Fe Corporation
Kennecott Ventures, Inc.
Carborundum Belgium S.A.
Carborundum Environmental Systems Canada, Ltd.
Carborundum International S.A.
Carborundum Company of Puerto Rico, The
Carborundum-Nederland B.V.
Carborundum Resistant Materials GmbH
Carborundum S.A.
Granalha de Aco, S.A.
Commercial Filters International Ltd.
Eletro Metalurgica Abrasivos Salto Ltda.
Brazniv Fiacao e Tecelagem Ltda.
Japan Purification Co., Ltd.
Minera Cerro San Pédro, S.A. de C.V.
Minerals de Bolanos, S.A. de C.V.
Pangborn Europe S.p.A.
San Pedro Mining Company
Minera Santa Veronica, S.A. de C.V.
Sohio Processed Minerals K.K.
Standard Oil Industrial Products U.K. Limited
Carborundum Company Limited, The
Carborundum Management Plan Trust Limited
Carborundum Resistant Materials Limited
Sohio Industrial Products Company
Italy S.r.l.
(Carborundum Resistant Materials
Cash Management Limited
Jonas Wells, Limited
Sohio Electro Minerals Company (U.K.) Limited
Stoline Limited
Ta Kwang Refractories Co., Ltd.
Tokyo Kokyu Rozai Co., Ltd.
Toshiba Monofrax Co., Ltd.

Lark Water Users
Metal Sales Company Limited
Nevada Northern Railway Company
New Bingham Mary Mining Company
North Jordan Irrigation Company
Penetryn System, Inc., The
Pfaudler (A'Asia) Pty. Ltd.
Pfaudler-Balfour, Limited
Pfaudler Development Corporation
Pfaudler, S.A. de C.V.
Pfaudler Equipamentos Industriais Ltda.
Pfaudler-Werke A.G.
P.T. Kennecott Indonesia
Quebec Columbium Ltd. (voting control)
Seven Hundred Seven Development Corporation
Societe Miniere d'Haiti, S.A.
Sohio Electronic Systems, Inc.
Ionex/HEI Corporation
Soldier Canyon Water Company
Utah and Salt Lake Canal Company
Sohio Alaska Transportation Company
Sohio Foreign Sales Corporation
Sohio Gas Pipeline Company
Sohio-Iran Trading, Inc.
Iricon Agency Ltd.
Sohio Petroleum Company
Chisholm Pipeline Company
Sohio Qatar Petroleum Company
Standard Gas Marketing Company
Webb International Minerals, Inc.
Sohio Pipe Line Company
Alyeska Pipeline Service Co.
Sohio/BP Trans Alaska Pipeline Capital Inc.
Sohio Supply Company
Gravcap Inc.
Sohio Algeria Company
Sohio Algeria Supply Company

Sohio Transportation Company
Sohio Venezuela Company
Sohio Western Crude Oil Company
Sohio Western Mining Company
SPC Shipping Inc.
Standard Oil Advanced Fuels Technology Company
Standard Oil Alternate Energy Development Company
Paraho Development Corporation
White River Shale Oil Corporation
Standard Oil Chemical Company
Vistron Supply Company, The
Standard Oil Commercial Development Company
Standard Oil Company (Ohio) International N.V., The
Kennwest V.B.
Standard Oil Finance Company
West Texas Gulf Pipe Line Company

Union Oil Company of California
Kaneb Services, Inc.
Magma Power Company
Union Exploration Partners, Ltd.

Nos. 86-303 and 86-304

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

DONALD P. HODEL, SECRETARY OF THE INTERIOR, *et al.*,
Petitioners,

AMOCO PRODUCTION COMPANY, *et al.*,
Petitioners,

v.

TRIBAL VILLAGE OF AKUTAN, *et al.*,
Respondents.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

Nos. 86-303 and 86-304

DONALD P. HODEL, SECRETARY OF THE INTERIOR, *et al.*,
Petitioners,

AMOCO PRODUCTION COMPANY, *et al.*,
Petitioners,

v.

TRIBAL VILLAGE OF AKUTAN, *et al.*,
Respondents.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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The Tribal Villages of Akutan, Togiak and Nelson Lagoon, the State of Alaska, Trustees for Alaska, and others respectfully request that this Court deny the petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit. The petitions should be denied because they present issues already before this Court. As conceded by the Secretary of the Interior, the legal issues presented by this case are currently under consideration in *Hodel v. Village of Gambell*, No. 85-1406 and *Amoco Production Co. v. Village of Gambell*, No. 85-

1239. By agreement of the parties, all proceedings in this case are stayed in the district court pending this Court's disposition of the issues presented in *Gambell*. Since further proceedings in this case will be governed by this Court's forthcoming decision in *Gambell*, no purpose would be served by granting certiorari here.

STATEMENT OF THE CASE

This case concerns Secretary Hodel's decision to hold Outer Continental Shelf Lease Sale 92. In early December, 1985, Secretary Hodel announced his intention to offer 990 oil and gas leases to 5.6 million acres of the OCS lying under the waters of the geologic formation known as the North Aleutian Basin. The lease sale area is located between 11 and 114 miles off the southwestern coast of Alaska in the waters of Bristol Bay.[1]

The lease sale presents substantial threats to the environment, the subsistence hunting and fishing economy which depends upon that environment, and the commercial fisheries which support a substantial portion of Alaska's population. Bristol Bay is one of the richest and most valuable marine areas in the world.[2] Its importance to subsistence hunting and fish-

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[1] *See* U.S. Department of Interior, Minerals Management Service, SECRETARIAL ISSUE DOCUMENT, SALE 92, NORTH ALEUTIAN BASIN (August 1985) (SID) (CR. 3, Ex. 1, p. 1); FINAL NOTICE OF SALE, 50 Fed. Reg. 51,372 (Dec. 16, 1985).

[2] U.S. Department of the Interior, FINAL ENVIRONMENTAL IMPACT STATEMENT, NORTH ALEUTIAN BASIN, SALE 92, September 1985 (FEIS) at III-C-1 (The fisheries of Bristol Bay are among the most productive in the world); National Marine Fisheries Service (NMFS) COMMENTS ON THE PROPOSED NOTICE OF

ing is unparalleled. The marine and coastal areas of the region support a broad spectrum of migratory fish, birds and marine mammals, all of which are critical subsistence resources for rural villages throughout western Alaska. FEIS at Table III-36. Approximately 88% of all five species of Pacific salmon entering the streams bordering the Bering Sea migrate through the waters of Bristol Bay, spending significant and critical periods of their development in the sale area. FEIS at III-B-1. At least 20 species of marine mammals frequent the sale area, and thousands of waterfowl migrate and feed in the Bristol Bay area each year. *See generally* FEIS at Chapter III.

The Bristol Bay lease sale threatens this fish and wildlife. Interior indicates there is a 52-57% chance of one or more oil spills of 1,000 barrels or more occurring if oil and gas reserves are found in the lease sale area. U.S. Department of the Interior, ENVIRONMENTAL ASSESSMENT, LEASE SALE 92 (September 1985) at 5, Ex. 6 to *Secretary's Oppo. Memo.* (CR. 14). There is also the possibility of a catastrophic spill. Interior acknowledges that activities associated with the development and production of oil and gas reserves in Bristol Bay could be expected to directly reduce subsistence harvests by killing some percentage of the fish and wildlife taken for subsistence purposes. *See generally* FEIS at Chapter IV. It further predicts that oil spills could affect the social and cultural systems of some rural villages by disturbing

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SALE at 1, *State of Alaska Mot. for Prelim. Inj.*, Ex. 8-A (CR. 2, J85-037) (Bristol Bay is the single most important region of the United States OCS for marine mammals and commercial fisheries).

subsistence-use patterns. FEIS at IV-B-139-141, 144. Should an oil spill cause the closure of the Bristol Bay commercial salmon fisheries for fear of producing a tainted product, the closure could cause a "shortage of cash income which would result in unmet subsistence needs, thereby causing a burden to family - or institutional - support networks." FEIS at IV-B-144. Alterations in subsistence patterns could cause outmigration and a breakdown in family relationships and kinship structures. FEIS at IV-B-144-45.

The plaintiffs in this action brought suit because they judged that Interior had inadequately considered and improperly weighed the impacts associated with the Bristol Bay Lease Sale. The plaintiffs, here the respondents, represent twenty five different parties, each with different interests in and objections to the Bristol Bay sale. They include: the State of Alaska and other political subdivisions; tribal entities including three villages in western and southwestern Alaska, an intertribal organization representing 56 villages in the Yukon River Delta, and the Eskimo Walrus Commission; various organizations representing commercial fishing interests; and a coalition of environmental organizations, including Trustees for Alaska and the Natural Resources Defense Council, Inc.[3]

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[3] Respondents are collectively referred to as the "villages." They include the Tribal Village of Akutan; the Tribal Village of Togiak; the Tribal Village of Nelson Lagoon; Governor Bill Sheffield; the State of Alaska; Alaska Independent Fishermen's Marketing Association; Aleutians East Coastal Resource Service Area; Bering Sea Fishermen's Association; Bristol Bay Borough; Bristol Bay Coastal Resources Service Area; Cenaliutritt; United Fishermen of Alaska; Trustees for Alaska; Natural Resources Defense Council, Inc.; Eskimo Walrus Commission; Northern

In three separate lawsuits filed in late December, 1985, the villages sought to enjoin the Bristol Bay Lease Sale. Though the suits raised a number of challenges to the sale -- based, *inter alia*, on the National Environmental Policy Act, the Outer Continental Shelf Lands Act and the Endangered Species Act -- the only issue presented to this Court at this time relates to Section 810 of Title VIII of the Alaska National Interest Lands Conservation Act.[4] Title VIII of the Conservation Act implements systematic and comprehensive protections for subsistence hunting and fishing rights in Alaska. Section 810 of that title insures that leasing federal lands will not unreasonably compromise those rights. It requires federal officials to carefully evaluate the impact of leasing on subsistence uses and resources and to identify alternative land selections before making any leasing decisions. 16 U.S.C. § 3120(a). For leasing that might significantly restrict subsistence uses, the land manager, before issuing any leases, must give notice, hold hearings,

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Alaska Environmental Center; City of Quinhagak; Nunam Kitlutsisti; Alaska Center for the Environment; Village of False Pass; Sierra Club; the Wilderness Society; Environmental Policy Institute; National Audubon Society; and Defenders of Wildlife.

[4] Act of Dec. 2, 1980, Title VIII, Pub. L. No. 96-487, 94 Stat. 2371, *codified at* 16 U.S.C. § 3101 *et seq.* Each of the three lawsuits alleged violations of Section 810 of the Conservation Act. The State of Alaska and Trustees for Alaska also alleged violations of Section 102(2)(C) of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C); Sections 7 and 9 of the Endangered Species Act (ESA), 16 U.S.C. §§ 1536, 1538; and Section 19 of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1345. The district court found it unnecessary to reach these claims once it found sufficient grounds for issuance of the preliminary injunction because of the Secretary's violation of Section 810 of the Conservation Act.

and insure that: (1) the restriction is necessary; (2) the leasing involves the minimal amount of public lands; and (3) reasonable steps will be taken to minimize adverse impacts on subsistence uses and resources. 16 U.S.C. § 3120(a)(1)-(3).

The villages claim that Interior violated this statute when preparing for OCS Sale 92. Chief among these violations are: (1) the Secretary's failure to comply with the mandates of the first sentence of Section 810(a) which require that he study and evaluate the effect of his leasing decision on subsistence uses on a village basis; (2) the Secretary's failure to apply the applicable legal standard announced by the court of appeals in two previous cases in determining whether leasing "would significantly restrict subsistence uses and resources;" and (3) the Secretary's failure to find, even under his inappropriate "would in fact" standard, that Lease Sale 92 "would significantly restrict" subsistence uses.

The district court found that the villages would probably prevail on their claim that the Secretary had used the wrong legal standard when applying the Conservation Act to OCS Lease Sale 92. *Memo. and Order* at 4, CR. 37 (Fed. Pet App. 13a). Because the Secretary could not unequivocally conclude that the leasing "would in fact" restrict subsistence uses, he determined that he need not comply with Section 810(a)(1)-(3) of the Conservation Act. The district court found that the Secretary applied the wrong legal standard in reaching this conclusion. *Id.* Relying on *Village of Gambell v. Hodel*, 774 F.2d 1414, 1421-22 (9th Cir. 1985), *cert. granted*, 106 S. Ct. 2274 (1986) and *Kunaknana v. Clark*, 742 F.2d 1145, 1151 (9th Cir. 1984), it concluded that the Secretary must com-

ply with Section 810(a)(1)-(3) of the Conservation Act whenever there are "substantial questions" as to whether leasing would significantly restrict subsistence uses. *Id.* (Fed. Pet. App. 10a-11a).[5]

The district court further found that the Secretary's decision not to comply with the pertinent sections of the Conservation Act was arbitrary and capricious even assuming that his "would in fact" standard was the appropriate test. *Memo. and Order* at 3, CR. 37 (Fed Pet. App. 11a-12a). Although Interior had conceded in studies prepared pursuant to the NEPA that "[d]irect effects on subsistence-use patterns in specific communities could be realized," FEIS at IV-B-138, it nevertheless found in its Section 810 analysis that none of the 990 leases to 5.6 million acres of OCS lands underlying Bristol Bay was likely to signifi-

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[5] In determining when the Secretary must comply with the provisions of Section 810(a)(1)-(3), the district court noted the appropriateness of applying the "substantial questions" standard adopted by the court of appeals for determining when the Secretary must prepare an EIS under the NEPA. *Memo. and Order* at 3, n. 1, CR. 37 (Fed. Pet. App. 11a). The NEPA requires that an EIS be prepared for all major federal actions "significantly affecting" the quality of the human environment. 42 U.S.C. § 4332(2)(C). The courts of appeals have rejected arguments that the phrase "actions significantly affecting" means only those actions which "will in fact" significantly affect the human environment. They have held that when substantial questions are raised as to whether a project will have this effect, the agency must prepare an EIS. *E.g., Quinonez-Lopez v. Coco Lagoon Development Corp.*, 733 F.2d 1, 2 (1st Cir. 1984); *Save Our Ten Acres v. Kreger*, 472 F.2d 463, 467 (5th Cir. 1973); *Minnesota Public Interest Research Group v. Butz*, 498 F.2d 1314, 1320 (8th Cir. 1974); *Foundation for North American Wild Sheep v. United States Dept. of Agriculture*, 681 F.2d 1172, 1177-78 (9th Cir. 1982).

cantly restrict subsistence uses. FEIS at IV-K-9-10. Noting that "it is unclear on what basis the Secretary determined (beyond his oil spill risk analysis) that subsistence effects were unlikely," the district court found that the administrative record did not support the Secretary's conclusion that the lease sale was "unlikely" to affect subsistence activities. *Memo. and Order* at 3, CR. 37 (Fed. Pet. App. 12a).

On the basis of its holding that the Secretary used the wrong legal standard when applying the Conservation Act to OCS Sale 92, the district court issued a preliminary injunction on January 13, 1986. Its original order enjoined the Secretary from receiving, opening or accepting any bids. *Prelim. Inj.*, CR. 38 (Fed. Pet. App. 15a). At the request of the oil companies, the district court later modified its order to allow Interior to accept sealed bids, but required that the bids be held unopened and under seal until further order of the court. The court also tolled the time set by law for both the return of unopened bids and the withdrawal of bids by the oil companies. *Partial Stay of Prelim. Inj.*, CR. 43 (Fed. Pet. App. 16a-17a).

The Secretary and the oil companies took an expedited appeal. The sole issue raised on appeal was whether Interior had applied the correct standard in making the "significant restriction" determination required to trigger compliance at the lease sale stage with the notice, hearings and findings mandated by Section 810(a)(1)-(3). On April 28, 1986, the court of appeals affirmed the district court's order enjoining Lease Sale 92. *Tribal Village of Akutan v. Hodel*, 792 F.2d 1376 (9th Cir. 1986) (Fed. Pet. App. 1a). Rejecting the argument that significant restrictions must be "likely" in order to trigger full compliance at the

lease sale stage with the mandates of Section 810(a)(1)-(3), it found that the Secretary applied the wrong standard when deciding not to comply with Section 810(a) of the Conservation Act. 792 F.2d at 1378-79. Its conclusion in this regard rested solely on its previous decisions in *Village of Gambell v. Hodel*, 774 F.2d 1414 (1985), *cert. granted*, 106 S. Ct. 2274 (1986) and *Kunaknana v. Clark*, 742 F.2d 1145 (9th Cir. 1984). 792 F.2d at 1379 (Fed. Pet. App. 5a-7a).

Following the court of appeals' decision, the parties agreed to a stay of all proceedings in the district court pending this Court's disposition of the issues raised in *Hodel v. Village of Gambell*, No. 85-1406 and *Amoco Production Co. v. Village of Gambell*, No. 85-1239. Pursuant to this stipulation, the district court stayed all proceedings pending this Court's resolution of the issues presented in *Gambell*. (Fed. Pet. App. 18a-19a).

REASONS FOR NOT GRANTING THE WRIT

A. REVIEW OF THE INTERLOCUTORY ORDER OF THE LOWER COURT IN THIS CASE IS UNNECESSARY AND UNWARRANTED.

The Secretary and the oil companies assert that this case presents the issues of: (1) whether Section 810 of the Conservation Act applies to the OCS; (2) whether an injunction is the appropriate remedy for a violation of Section 810; and (3) whether Section 810 -- which directs that "[n]o . . . lease . . . which would significantly restrict subsistence uses shall be effected . . ." -- applies to leasing when significant restrictions are possible at the development and production stage.

These issues do not warrant the grant of certiorari, either individually or collectively. The first two issues

are not even properly presented to this Court.[6] Moreover, all parties agree that all three issues are currently pending before this Court in *Village of Gambell v. Hodel*, 774 F.2d 1414 (9th Cir. 1985), *cert. granted, Amoco Production Co. v. Village of Gambell*, and *Hodel v. Village of Gambell*, 106 S. Ct. 2274 (1986). Nevertheless, the Secretary and the oil companies request that this Court grant certiorari on the same issues here. The Secretary requests that this Court hold his petition for a writ of certiorari and dispose of it as appropriate in light of this Court's decision in *Gambell*. Under the Secretary's proposal, this Court would hold the petitions, decide *Gambell*, and then either deny certiorari or grant certiorari and summarily remand the matter to the court of appeals. On remand, the court of appeals would presumably remand the matter to the district court for further proceedings consistent with this Court's *Gambell* decision.

This process would only waste the time of this Court and the parties participating in this lawsuit. This case involves an interlocutory appeal, the resolution of which depends on this Court's disposition of issues already before it in *Gambell*. In recognition of this fact, the parties to this action agreed to stay all proceedings in the district court pending this Court's decision in *Gambell*. On May 21, 1986, pursuant to a

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[6] Neither the Secretary nor the oil companies raised these issues in the court of appeals. This Court has repeatedly held that "[w]hen the issues are neither raised before nor considered by the court of appeals, this Court will not ordinarily consider them." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 146 n. 2 (1970). *Accord, e.g., Youngberg v. Romero*, 457 U.S. 307, 316 n. 19 (1982); *Lawn v. United States*, 355 U.S. 339, 362 n. 16 (1958); *Husty v. United States*, 282 U.S. 694 (1931).

joint motion of the parties, the district court entered its stay order. Under the district court's order, the Secretary was allowed to continue to hold, unopened and under seal, the bids he received for Lease Sale 92 tracts. All other proceedings, including those on a host of issues unconnected with Section 810, are stayed pending the resolution of the issues raised in *Gambell*. *Stay Order* (Fed. Pet. App. 18a-19a).

Since the issues presented by this case will be decided in *Gambell*, and since this case is stayed in the district court pending that decision, no reason exists for granting certiorari to review the court of appeals' decision in this case. The district court will automatically review the appropriateness of its preliminary injunction in light of this Court's decision in *Gambell*, and no harm will accrue to the Secretary or the oil companies pending that decision. In the event this Court modifies the court of appeals' decision in *Gambell*, the district court will be obligated to modify its order in this case, and if necessary dissolve the preliminary injunction if the villages are unable to establish the basis for an injunction on other grounds.[7]

B. THIS CASE DOES NOT PRESENT AN IMPORTANT ISSUE NOT ALREADY BEFORE THE COURT IN *GAMBELL*.

Although the Secretary concedes that "[t]he basic issue of statutory construction is already before the Court in *Village of Gambell*" (Fed. Pet. 8), the oil

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[7] In granting the preliminary injunction, the district court stated that if it becomes necessary to address the villages' remaining claims on a preliminary injunction basis, "plaintiffs may file renewed motions for [a] preliminary injunction." *Memo. and Order* at 4, CR. 37 (Fed. Pet. App. 12a).

companies assert that even if this Court affirms *Gambell*, this case presents an additional important issue. They claim that the issue presented here, but not in *Gambell*, is whether Section 810(a)(1)-(3) applies to a disposition of federal lands "when under any reasonable hypothesis it is unlikely to restrict subsistence [uses]." (Amoco Pet. 8, n. 10).

This case does not present an important issue not already before this Court in *Gambell*. The court of appeals addressed this question directly, unambiguously finding that the issues in the two cases were identical for purposes of Section 810 of the Conservation Act. The court of appeals reviewed the findings made by Interior in *Gambell* and compared them to the findings made in this case. Expressly holding that the findings in the two cases were substantially the same, it stated:

> The *Gambell II* court rejected the Secretary's view that section 810(a)(1)-(3) procedures required a *likelihood* of significant subsistence restrictions, and, *on findings not meaningfully different than those here*, concluded that the Secretary was required to comply with the notice and hearing requirements of the statute. We believe that *Gambell II* governs this case, and that the district court did not err in determining that appellants had shown a strong likelihood of success on the merits of their claim that the Secretary had failed to comply with the notice and hearing requirements of section 810(a)(1)-(3).

792 F.2d at 1379 (Fed. Pet. App. 6a-7a) (first emphasis in original, second emphasis added).

Moreover, the assertion that OCS Lease Sale 92 is "unlikely" to significantly restrict subsistence uses under any reasonable hypothesis is unequivocally repudiated by the record in this case, as well as by the district court's reading of that record. After combing the record, the district court specifically noted that the record contained no evidence which could justify the Secretary's finding that the Bristol Bay sale was "unlikely" to significantly restrict subsistence uses. *Memo. and Order* at 3, CR. 37 (Fed. Pet. App. 12a).

The conclusion of the district court is fully supported by the record. That record reveals that the Secretary had no basis for claiming that the Bristol Bay sale was "unlikely" to significantly restrict subsistence uses. Lease Sale 92 offered 5.6 million acres of the OCS for oil and gas leasing. ENVIRONMENTAL ASSESSMENT at 2. Some of the tracts are located within 11 miles of the shore. *Id.* The Secretary, in studies prepared pursuant to the NEPA, estimated a 52-57% chance of an oil spill of 1,000 barrels during the production stage and predicted a 21% chance of discovering commercial quantities of oil and gas. *Id.* at 5. The probability of an oil spill contacting biological resources in the Port Moller and Nelson Lagoon area ranged between 13-21%, depending upon the time-frame considered. ENVIRONMENTAL ASSESSMENT at Table 4. The Secretary further predicted that an oil spill would have major effects on red king crab, major to moderate effects on marine and coastal birds, and moderate effects on fur seals. FEIS at Table II-2, Table S-1. The Secretary also concluded, in his NEPA analysis, that "[d]irect effects on subsistence-use patterns in specific communities could be realized." FEIS at IV-B-138. *See also* FEIS at IV-B-140.

Yet in his "Section 810 Analysis," the Secretary ignored the direct effects the lease sale could have on the subsistence uses of specific villages and omitted from consideration the possible effects of an oil spill on the region's fish and wildlife populations which support those uses. FEIS at IV-K-1-10 (Amoco Pet. App. 21a-37a). Although the Secretary reached the conclusion that the Bristol Bay sale could significantly affect the fish and wildlife of the region, he found that the sale would not significantly affect subsistence uses which are totally dependent upon that fish and wildlife. This arbitrary inconsistency led the district court to conclude that the record could not, as a factual matter, support the Secretary's finding that the lease sale was "unlikely" to restrict subsistence uses.

CONCLUSION

The petitions for certiorari should be denied. This Court has already granted review of the only legal issue presented for review by this case. Since this case involves an interlocutory appeal, and since all proceedings below have been stayed, granting the petitions would only waste the time of this Court and the parties.

Respectfully submitted,

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